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PART I

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Agricultural Stabilization and Conservation Service
Atomic Energy Commission
Business and Defense Services Administration
Civil Aeronautics Board
Commerce Department
Consumer and Marketing Service
Customs Bureau
Defense Department
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Federal Power Commission
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Hazardous Materials Regulations Board
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Small Business Administration

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Now Available

LIST OF CFR SECTIONS AFFECTED

1949–1963

This volume contains a compilation of the "List of Sections Affected" for all titles of the Code of Federal Regulations for the years 1949 through 1963. All sections of the CFR which have been expressly affected by documents published in the daily Federal Register are enumerated.

Reference to this list will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

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Title 3—THE PRESIDENT

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NATIONAL FARM SAFETY WEEK, 1968

By the President of the United States of America

A Proclamation

When our Nation was very young, a man wrested a living from the land as best he could. His tools were primitive, his productivity low. He was fortunate if he could feed his family and have a little left over to sell.

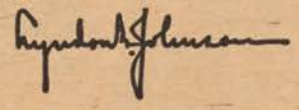
Today the technological revolution has made the American farmer food supplier to the world. His produce feeds his family, his neighbors, his countrymen, and thousands abroad. Yet that same revolution has brought unforeseen dangers. Modern farming is a complex and highly skilled profession. It is also a hazardous one.

Agriculture currently ranks third among our industries in accidental death rate. Thousands of farm residents are killed every year in accidents. More than 700,000 others are disabled. The cost to the Nation in dollars is almost $2 billion. The cost in anguish is incalculable.

This shameful waste must stop. It will stop when safety has become the conscious concern of all who work to produce America's great agricultural abundance.

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, do hereby call on the people of the Nation to observe the week of July 21, 1968, as National Farm Safety Week. I urge all persons who live on farms, and those persons and groups serving or allied with agriculture, to intensify their individual efforts to curtail and halt accidents where and when possible at work, in homes, at recreation, and on public roads.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of February, in the year of our Lord nineteen hundred and sixty-eight, and of the independence of the United States of America the one hundred and ninety-second.



[F.R. Doc. 68-2499; Filed, Feb. 26, 1968; 2:40 p.m.]

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Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 728—WHEAT

Subpart—Regulations Pertaining to Farm Acreage Allotments, Yields, and Wheat Certificate Program for Crop Years 1968–69

Correction

In F.R. Doc. 68–1820 appearing at page 3045 in the issue of Friday, February 16, 1968, the following corrections should be made in the tabular material of § 728.515(f):

1. Under the center heading "Kentucky", the figure opposite "Hardin" should read "32.7".

2. Under the center heading "Mississippi", the county "Yalobuska" should be corrected to read "Yalobusha".

3. Under the center heading "New York", the fourth county and figure should be deleted and "Cattarauguf ------ 31.2" substituted.

4. Under the center heading "North Carolina", the line beginning "Pamlico" following "New Hanover" should be deleted. The line following "Orange" should read "Pamlico ------ 35.5".

5. Under the center heading "Wisconsin", the figure opposite "Pierce" should read "25.6".

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 817, Amdt. 1]

PART 817—REQUIREMENTS RELATING TO BRINGING OR IMPORTING SUGAR OR LIQUID SUGAR INTO CONTINENTAL UNITED STATES

Products and Mixtures

A notice of proposed rule making was published in the FEDERAL REGISTER of December 12, 1967 (32 F.R. 17669) to issue an amendment establishing quantitative import limitations for the calendar year 1968 and each subsequent calendar year on sugar-containing products or mixtures that contain flour or butterfat or both, if the flour or butterfat content, singly or combined, constitute the principal solid ingredients other than sugar, and the butterfat content is not more than 5.5 percent by weight. Interested persons were given 10 days to submit written data, views, or objections in connection with the proposed amendment.

Views and comments were received from several representatives of the dairy industry recommending that the regulation also restrict the importation of products referred to as "sugar crumb," "milk crumb," and "chocolate crumb." These chocolate containing products have not been limited by either the sugar-containing products provision of Sugar Regulation 817 or by the dairy products import regulation. Last year the Tariff Commission conducted public hearings regarding limitations on the importation of dairy products and on the basis of the findings and recommendations of the Commission, Presidential Proclamation No. 3790 was promulgated restricting the importation of certain dairy products, where the butterfat content is more than 5.5 percent. However, such proclamation did not restrict sugar-containing products heretofore restricted by Sugar Regulation 817 where the butterfat content is the principal ingredient, other than sugar, and such butterfat content is 5.5 percent or less. Accordingly, this amendment imposes restrictions on sugar-containing products or mixtures that contain flour or butterfat or both, if the flour or butterfat content, singly or combined, constitute the principal solid ingredients other than sugar, and the butterfat content is not more than 5.5 percent by weight.

The proposed regulation is hereby adopted without change.

Effective date: In accordance with 5 U.S.C. 553, this amendment shall become effective 30 days following the date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on February 21, 1968.

ORVILLE L. FREEMAN,
Secretary.

Pursuant to the provisions of section 403 of the Act (61 Stat. 932) paragraph (d) of § 817.10 of Part 817, Chapter VIII, Title 7, is amended to read as follows:

§ 817.10 Sugar containing products and mixtures.

* * * * *

(d) It is hereby determined that prospective importations into the continental United States, Hawaii, and Puerto Rico of the following described sugar-containing products or mixtures will substantially interfere with the attainment of the objectives of the Act and shall be subject to the import limitations provided in this paragraph: Products or mixtures which (1) contain more than 25 percent sugar expressed as a percent of the total weight of solids (excluding moisture and volatile matter); (2) contain flour or butterfat or both, provided (i) such ingredients, singly or combined, constitute the principal solid ingredients other than sugar, and (ii) the butterfat content is not more than 5.5 percent by weight; and (3) either are to be further subjected to processing or mixing with similar, or other ingredients, or are not to be marketed to the ultimate consumer in the identical form and package in which imported. The total quantity of all such products or mixtures which may be imported from each country during the calendar year 1968 and each subsequent calendar year shall be limited to 100 short tons, raw value, of sugar content (dry basis), the equivalent of 187,000 pounds of refined sugar. None of the described products or mixtures, subject to the import limitation imposed by this paragraph shall be imported except pursuant to the procedural requirements contained in paragraph (c) of this section. All persons should take notice that the total quantity of products or mixtures containing more than 5.5 percent by weight of butterfat which may be imported from a foreign country is subject to the quantity import limitations on butterfat containing products imposed by Presidential Proclamations issued pursuant to section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624). It is for this reason that sugar-containing products containing butterfat of more than 5.5 percent by weight are not dealt with in the regulation.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153; sec. 206; 61 Stat. 927, as amended, 7 U.S.C. 116)

[F.R. Doc. 68–2376; Filed, Feb. 27, 1968; 8:45 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Lemon Reg. 308, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure,

and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

Order, as amended. The provisions in paragraph (b)(1)(ii) of § 910.608 (Lemon Reg. 308, 33 F.R. 3101) are hereby amended to read as follows:

§ 910.608 Lemon Regulation 308.

* * * * *

(b) *Order.* (1) * * *

* * * * *

(ii) District 2: 148,800 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: February 21, 1968.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68-2406; Filed, Feb. 27, 1968; 8:47 a.m.]

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Nominations for Membership in Prune Administrative Committee

On February 7, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 2638) regarding a proposed revision of paragraph (a) of § 993.128 of Subpart—Administrative Rules and Regulations (7 CFR Part 993). The subpart is operative pursuant to the marketing agreement, as amended, and Order No. 993, as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice pertained to revision of the boundaries of the seven independent producer election districts set forth in § 993.128(a). The election districts are for the purpose of obtaining nominations for producer members to represent independent producers on the Prune Administrative Committee.

Interested persons were given 7 days in which to submit written data, views, or arguments with respect to the proposal. None were submitted within the prescribed time.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Prune Administrative Committee, and other available information, the revision is hereby adopted without change and is set forth below.

It is found that good cause exists for making this action effective promptly and for not postponing the effective time until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) In accordance with § 993.128(b) of the Administrative Rules and Regulations, meetings are to be held prior to March 8 in the various election districts for the purpose of obtaining names of proposed candidates for nomination to the Secretary for selection as members and alternate members for the respective districts; (2) independent producers should know in which districts their orchards are located and which nomination meetings to attend; (3) further, the names of such candidates are required to be mailed on a ballot to each independent producer of record in the appropriate district prior to March 15; (4) this action imposes no restrictions on handlers; and (5) no useful purpose would be served by postponing the effective time beyond publication in the FEDERAL REGISTER.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated February 21, 1968, to become effective upon publication in the FEDERAL REGISTER.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

Subpart—Administrative Rules and Regulations (§§ 993.101–993.174) is hereby amended by revising paragraph (a) of § 993.128 to read as follows:

§ 993.128 Nominations for membership.

(a) *Districts.* In accordance with the provisions of § 993.28, the districts referred to therein are described as follows:

District No. 1. Sutter County.

District No. 2. The counties of Marin, Napa, and that portion of Sonoma County south of the line formed as follows: Beginning with Franz Creek from its source at the Napa-Sonoma county line to its confluence with Maacama Creek, thence along Maacama Creek to its confluence with the Russian River, and thence along the Russian River to its mouth.

District No. 3. The counties of Del Norte, Siskiyou, Humboldt, Trinity, Lake, Mendocino, and all that portion of Sonoma County not included in District No. 2.

District No. 4. The counties of Alameda, San Francisco, San Mateo, Santa Cruz, and that portion of Santa Clara County north of a straight line extending along Miramonte Avenue, northeasterly to the Stanislaus County line, and southwesterly to the Santa Cruz County line.

District No. 5. The counties of San Benito, Monterey, and all that portion of Santa Clara County not included in District No. 4.

District No. 6. The counties of Butte, Yuba, Amador, Contra Costa, San Joaquin, Stanislaus, Merced, Fresno, Tulare, San Luis Obispo, and all the counties in the area not included in District Nos. 1 through 5, inclusive, and in District No. 7.

District No. 7. The counties of Shasta, Tehama, Glenn, Colusa, Yolo, Sacramento, and Solano.

* * * * *

[F.R. Doc. 68-2407; Filed, Feb. 27, 1968; 8:47 a.m.]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

MILK IN MASSACHUSETTS-RHODE ISLAND-NEW HAMPSHIRE AND CERTAIN OTHER MARKETING AREAS

Order Terminating Suspension of Certain Provisions of Orders

In the matter of:

7 CFR Part	*Marketing Area*
1001	Massachusetts-Rhode Island-New Hampshire.
1002	New York-New Jersey.
1003	Washington, D.C.
1004	Delaware Valley.
1015	Connecticut.
1016	Upper Chesapeake Bay.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the orders regulating the handling of milk in the above designated marketing areas, it is hereby found and determined that:

(a) The suspension action of September 29, 1967 (32 F.R. 13804), which eliminated seasonality of pricing of Class II milk (Class III in New York-New Jersey) in the six northeastern orders, effective for milk delivered on and after September 1, 1967, will not tend to effectuate the declared policy of the Act with respect to all such orders after February 29, 1968.

(b) Notice of proposed rule making, public procedure thereon and 30 days' notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This order terminating suspension of certain provisions of the orders is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the designated marketing areas.

(2) The suspension action was taken, pending the completion of prescribed procedures pursuant to a hearing held on proposed amendments to the orders, to provide immediate price relief in September and the succeeding months when seasonal price differentials would maintain the price above the annual average level. This was accomplished by suspending all of the monthly seasonal adjustments in the surplus class price provisions of the orders except the one otherwise applicable in the month of February. The seasonal adjustment factors range from 1 to 8 cents above the February amount during the months of July through January and from 7 to 14 cents below in the months of March through June.

(3) The amendment procedures in this matter have not yet been completed. Continuation of the suspension beyond February 29 would result in substantially higher surplus prices, in the months immediately ahead, than the orders would otherwise provide. This would be contrary to the purpose for which the suspension action was taken and could

seriously disrupt the orderly disposition of the reserve milk supplies in the respective markets during the period when such supplies are at their normal seasonal peak.

Therefore, good cause exists for terminating the suspension action effective March 1, 1968.

It is therefore ordered, That the aforesaid order suspending provisions of specified orders, made effective for an indefinite period beginning with milk delivered on and after September 1, 1967, is hereby terminated.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: March 1, 1968.

Signed at Washington, D.C., on February 21, 1968.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 68–2409; Filed, Feb. 27, 1968; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airworthiness Docket No. 68–WE–1–AD; Amdt. 39–559]

PART 39—AIRWORTHINESS DIRECTIVES

McDonnell Douglas Model DC–9 Series Airplanes

Amendment 39–545 (33 F.R. 1069), AD 68–2–5, decreases the service life limit of two of the three available Nose Landing Gear Shock Strut Support Assemblies which are contained within the Cylinder Assembly on DC–9–10 and DC–9–30 Series airplanes. AD 68–2–5 erroneously stated that the previous service life limit for all Support Assemblies was 47,000 landings. Although the Support Assembly is contained within the Cylinder Assembly, which has a service life limit of 47,000 landings, the previous service life limit of all available Support Assemblies was in fact 26,700 landings. Since one of the three available Support Assemblies, P/N 5958435–1, is not affected by AD 68–2–5, its service life limit remains at 26,700 landings instead of 47,000 landings which is the impression created by AD 68–2–5. To remove that impression, the agency is amending AD 68–2–5 to explain that the service life limit for P/N 5958435–1 remains at 26,700 landings. The new service life limit of 8,000 landings established by AD 68–2–5 for P/N 5958435–501 and P/N 5920616–1 is not affected by this amendment.

Since this amendment provides a clarification only and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39–545 (33 F.R. 1069), AD 68–2–5, is amended by striking out the number "47,000" in the first sentence and inserting the number "26,700" in place thereof.

This amendment becomes effective February 29, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Los Angeles, Calif., on February 19, 1968.

LEE E. WARREN,
Acting Director,
FAA Western Region.

[F.R. Doc. 68–2434; Filed, Feb. 27, 1968; 8:49 a.m.]

[Docket No. 68–EA–17; Amdt. 39–558]

PART 39—AIRWORTHINESS DIRECTIVES

United Aircraft of Canada, Ltd.

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive requiring placarding and inspection and replacement when necessary of the United Aircraft of Canada, Ltd. Turboprop Engine PT6A–6B and PT6A–20.

There have been reported failures of the propeller reversing control system of the PT6A engine. Since this condition is likely to exist or develop in other engines of the same design an airworthiness directive is being issued to require placarding the engine against use of the propeller reversing system and an inspection of the reversing control cable terminal and replacement when necessary.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure herein are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new Airworthiness Directive:

UNITED AIRCRAFT OF CANADA, LIMITED. Applies to Models PT6A–6B and PT6A–20 Turboprop Engines.

Compliance, unless already accomplished, with (a) required prior to further flight and with (b) or (c) and where applicable (d) within the next 25 hours' time in service after the effective date of this AD.

To preclude either failure of the propeller to reverse or immediate reversing upon selection of reverse mode, the selection of propeller reversing is prohibited until the following inspections or replacements have been accomplished:

(a) Install a placard in the cockpit in full view of the pilot that reads: "Do Not Use Propeller Reverse".

(b) X-ray teleflex reversing control cable terminals P/N's 3010175 and 3010495 to determine that a minimum of 0.08-inch wall thickness exists between cable counterbore and shoulder of threaded yoke arm spindle undercut. Reject terminals with thickness below 0.08 inch.

(c) If X-ray is unavailable, disassemble the terminals and physically inspect in accordance with the instructions in United Aircraft of Canada, Ltd., Special Inspection No. 68–1 or an equivalent approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

(d) Replace terminals found below minimums with the same part number known to have sufficient wall thickness. (Spare terminals with walls verified to be in excess of 0.08-inch thick are identified with the letters DH within a circle marked on the hex of the coupling.)

[The information in this AD is similar to that contained in Canadian Department of Transport AD No. DF–PT–68–2 issued telegraphically on Feb. 6, 1968]

This amendment becomes effective February 28, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Jamaica, N.Y., on February 20, 1968.

WAYNE HENDERSHOT,
Acting Director, Eastern Region.

[F.R. Doc. 68–2495; Filed, Feb. 27, 1968; 8:49 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

Utilization of Packages and Labels Not in Compliance With Labeling Requirements of Fair Packaging and Labeling Act; Revision

In the FEDERAL REGISTER of July 21, 1967 (32 F.R. 10734), the Commissioner of Food and Drugs issued a statement of policy (21 CFR 3.57) dealing with the orderly disposition of label and package stocks in inventory and not complying with section 4 of the Fair Packaging and Labeling Act. The statement was issued in association with an order also published July 21, 1967 (32 F.R. 10729), amending Part 1 (21 CFR Part 1) to set forth the requirements of said Act regarding foods. The order had an effective date of July 1, 1968, for food packages and labels introduced into interstate commerce. The statement of policy provided for extensions of this effective date on an individual case basis for good cause shown and set forth three criteria for showing such good cause.

The Commissioner, on the basis of evaluation of extension requests currently under consideration and to facilitate expeditious handling of forthcoming requests, concludes that § 3.57 should be:

A. Amended to refer to inventories of labels and packages of drugs, devices, and cosmetics (an order amending Part 1 as to drugs, devices, and cosmetics was

published January 11, 1968 (33 F.R. 404)).

B. Expanded to explain procedures for requesting extensions after said effective date of July 1, 1968.

Therefore, under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a)) and by the Fair Packaging and Labeling Act (secs. 4, 6, 80 Stat. 1297, 1299, 1300; 15 U.S.C. 1453, 1455), and delegated by him to the Commissioner (21 CFR 2.120), § 3.57 is revised to read as follows:

§ 3.57 Stocks of packages and labels not complying with section 4 of the Fair Packaging and Labeling Act.

(a) Implementation of the Fair Packaging and Labeling Act (Public Law 89–755) will require changes in the labels of many foods, drugs, devices, and cosmetics now on the market. The law does not contemplate a disruption of legitimate business practices nor destruction of all stocks of labels and packages rendered not-in-compliance by the effective dates of the regulations promulgated pursuant to that Act. Section 6 of the Fair Packaging and Labeling Act provides that "no regulation adopted under this Act shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, nor shall any regulation under this Act preclude the orderly disposal of packages in inventory or with the trade as of the effective date of such regulation." Section 13 provides that the promulgating authority may by regulation postpone the effective date of the Fair Packaging and Labeling Act for an additional 12-month period for classes or types of consumer commodities.

(b) In the orders published in the FEDERAL REGISTER of July 21, 1967, and September 20, 1967, it is stated that the effective date of that initial order covering food labels under the Fair Packaging and Labeling Act shall be December 31, 1967, for all new food packages, new label designs, and labels being reordered, and shall be July 1, 1968, for all food packages and labels being introduced into interstate commerce. Extensions for stocks of packages and labels beyond July 1, 1968, will be considered on an individual case basis and are grantable for good cause shown. Good cause would necessarily include a showing that:

(1) The stocks are in compliance with the present terms of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder;

(2) Due diligence was expended in devising and obtaining labels and packages in compliance with the new regulations insofar as the facilities of the label and package manufacturers permit; and

(3) The stocks did not result from a deliberate attempt to overstock.

(c) The criteria set forth in paragraph (b) (1), (2), and (3) of this section will be equally applicable to stocks of packages and labels of drugs, devices, and cosmetics when the order of January 11, 1968 (33 F.R. 404), amending Part 1 of this chapter with respect to these items, becomes effective.

(d) Extension requests showing good cause, along with pertinent labels, packages, etc., shall be submitted in duplicate and shall consist of the following:

(1) A statement of the total number (not quantity) of labels or packages for which the extension is requested.

(2) Approximate dates revisions will be completed.

(3) The number of labels or packages which have been revised to comply with the Fair Packaging and Labeling Act.

(4) The number of labels or packages scheduled for revision by July 1, 1968.

(5) A duplicate set of representative product labels or packages for which extension is requested. The number to be submitted should be determined as follows:

(i) Ten products or less: Submit all.

(ii) More than 10 products: Submit sufficient labels, but not less than 10, to be fully representative.

This procedure is not to be construed as label preclearance. Extension requests need not be submitted for products that are the subject of pending petitions for exemption pursuant to § 1.1a of this chapter.

(Secs. 4, 6, 80 Stat. 1297, 1299, 1300, 15 U.S.C. 1453, 1455; sec. 701(a), 52 Stat. 1055, 21 U.S.C. 371(a))

Dated: February 20, 1968.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 68-2414; Filed, Feb. 27, 1968; 8:47 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 81]

PART 151—REGULATORY TAXES ON NARCOTIC DRUGS

Inventory and Recordkeeping Requirements

On December 13, 1967, a notice was published in the FEDERAL REGISTER (32 F.R. 17861) which stated that the Commissioner of Narcotics, pursuant to the provisions of section 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 7805) proposed to amend sections 27, 28, 41, and 413 of Part 151 of Title 26 of the Code of Federal Regulations to allow institutions registered under the Federal narcotic law in Classes III (retail dealer) and IV (institution) to order narcotic drugs on a single order form, prepare a single narcotic inventory, and keep a single set of narcotic records.

Interested persons were afforded an opportunity to submit views and comments. No unfavorable comments were received.

Accordingly, having determined that the proposed system would simplify the ordering, inventorial and recordkeeping procedures of institutions without lessening the controls over narcotic drugs, sections 27, 28, and 413 of Part 151 of Title 26 are amended to read as follows:

§ 151.27 Inventory required.

Every person making application for registry or reregistry in any class (see § 151.41) except Classes I and II, shall, as of December 31 preceding the date of his application or any date between December 31 and the date of application for such registry or reregistry, prepare in duplicate an inventory of all narcotic drugs and preparations on hand at the time of making such inventory. The inventories shall be prepared on the reverse side of Form 678, copies of which may be obtained from district directors upon request. If the taxpayer is engaged in business in more than one class, a separate inventory shall be prepared for each class except that an institution registered in Classes III and IV may prepare a single inventory. A Class V registrant is not required to make an inventory of preparations or remedies exempt under section 4702, but he is required to make an inventory of all nonexempt narcotic drugs and preparations in his possession. A duplicate copy of the inventory shall be kept on file by the maker for a period of 2 years.

§ 151.28 Registry numbers.

Upon approval of the application the district director will assign a registry number to the applicant. The numbers are issued serially without regard to classes. The same number shall be retained throughout all the consecutive periods for which the applicant may be registered. One registry number will cover all classes at the same location except Class IV, for which a separate registry number will be assigned. However, a person registering in Classes IV and V only, and institutions registered in Classes III and IV, will be assigned the same number for both classes. In the case of one engaged in business at two or more places, a separate number will be assigned for each place of business. The registry number of a person who discontinues operations will not be assigned to any other person for any portion of the same fiscal year.

§ 151.413 Form of record.

No special record form for the use of those registered practitioners is prescribed. Hospitals and institutions shall keep records in the manner best calculated to meet the conditions existing therein and to enable an inspecting officer quickly to ascertain the kinds and quantities of narcotics used daily. Hospitals and institutions registered in Classes III and IV may keep a single set of records. The initials of the practitioner giving directions for the administering of a narcotic should be entered on the patient's record chart, or a separate prescription giving the name and address of the patient, the date, and the physician's signature or initials, filed with the pharmacist in charge of the drug room before the narcotic leaves his control. If both chart and prescription are used,

reference to the prescription should be made on the chart.

Effective date. This Treasury Decision shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 7805, Internal Revenue Code, 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] HENRY L. GIORDANO,
Commissioner of Narcotics.

Approved: February 21, 1968.

JAMES POMEROY HENDRICK
Special Assistant to the Secretary (for Enforcement).

[F.R. Doc. 68-2418; Filed, Feb. 27, 1968; 8:48 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER P—RECORDS

[DIA Reg. 12-39]

PART 292—AVAILABILITY TO THE PUBLIC OF DEFENSE INTELLIGENCE AGENCY (DIA) INFORMATION

The Director, Defense Intelligence Agency approved the following on January 31, 1968:

Sec.

292.1 Purpose.
292.2 Scope.
292.3 Basic policies on disclosure.
292.4 Specific policies on disclosure.
292.5 Material that may be withheld from disclosure.
292.6 Persons authorized to disclose records requested by members of the public.
292.7 Expedited handling required.
292.8 Responsibilities of the Assistant Chief of Staff, Administration.
292.9 Responsibilities of disclosure authority.
292.10 Responsibilities of persons authorized to refuse to make documents available.
292.11 How the public submits requests for records.
292.12 Schedule of fees.
292.13 Filing an appeal for refusal to make records available.

AUTHORITY: The provisions of this Part 292 issued under 301 Stat. 379; 5 U.S.C. 301; 5 U.S.C. 552.

§ 292.1 Purpose.

This part implements 5 U.S.C., section 552 and DoD Directive 5400.7, June 23, 1967 (Part 286 of this chapter). It states basic policies and instructions governing the disclosure of unclassified records and tells members of the public what they must do to inspect or obtain copies of records.

§ 292.2 Scope.

This part is applicable to all organizational elements of the Defense Intelligence Agency (DIA) and governs the release of all unclassified records in the custody of these elements. It applies only to releasing information to the general public and is not applicable to requests from:

(a) Members of Congress.

(b) General Accounting Office.

(c) Other Government agencies and the courts for release and authentication of records.

§ 292.3 Basic policies on disclosure.

(a) It is the policy of the DIA to make available to the public that information and those records concerning its operations and activities which are rightfully public information.

(b) This basic policy is subject to the necessary exception, recognized in 5 U.S.C., section 552(b) and discussed in § 292.5, that in certain cases records need not be made public. However, even where nondisclosure is authorized by 5 U.S.C., section 552(b) and § 292.5, requested records should be disclosed if no significant purpose is served by withholding them. The determination of whether a significant purpose is served by withholding information under the provisions of § 292.5 is within the sole discretion of the DIA.

§ 292.4 Specific policies on disclosure.

(a) Any identifiable documentary material in the possession of the DIA which qualifies as a "record" as discussed in paragraph (b) of this section and which is not exempted under § 292.5 should be made available on the request of any person.

(b) In determining whether documentary material qualifies as a "record," 44 U.S.C., section 366, will be used as a guide. This statute which defines the word "records," provides in part that:

> When used in sections 366-376 and 378-380 of this title, the word "records" includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency of the U.S. Government in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein.

(1) The term "records" does not include objects or articles such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles, equipment, etc., whatever their historical value as "evidence."

(2) Records are not limited to permanent or historical documents; they include contemporaneous documents as well.

(c) For a record to be considered "identifiable" it must exist at the time of the request. There is no obligation to create a record to satisfy a request for information.

(d) Requesters must be reasonably specific in identifying records they would like made available. The DIA is not required to permit a requester to browse through entire files or large series of records to find a record he may then "identify." However, the DIA will make a reasonable effort to locate any records that are requested. More than one record may be requested, but each must be well identified.

(e) Requests for identifiable records may be denied only when an official designated in § 292.6 determines that such denial is authorized by this part.

(f) Pursuant to 5 U.S.C., section 522(a)(3), requesters will be charged the reasonable costs to the DIA of searching, copying, or certifying records. Charges will be in accordance with § 292.12. Except for any copies that may be provided, no charge will be made to the public for the use of the reading room in the DIASA Reference Library, Room 2C242, the Pentagon.

(g) When a request is received for a record which has been determined to be newsworthy, coordination with OASD (PA) will be obtained before disclosure to the requester.

(h) Defense Attaches will continue to make available as part of their service to the public those unclassified publications such as commercial and trade information which they have heretofore released. All other requests for identifiable records will be forwarded to the Director, DIA, Attention: DIASA.

§ 292.5 Material that may be withheld from disclosure.

Records that fall within the categories listed in paragraphs (a) through (i) of this section are not required to be made available to members of the public.

(a) Those containing information requiring protection in the interest of national defense or foreign policy according to the criteria established by DIA or by Executive order.

(b) Those containing rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or internal practices of the Defense Intelligence Agency and those providing management guidance to the Military Departments and the Unified and Specified Commands.

(c) Those containing information authorized or required by statute to be withheld from the public. The authorization or requirement may be found in the statute itself or in Executive orders or regulations authorized by, or in implementation of, the statute. Examples include:

(1) Documentary material referred to in 18 U.S.C., section 1905—Trade and financial information provided in confidence by businesses (see also paragraph (d) of this section).

(2) 35 U.S.C., section 181-88—Records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy orders have been issued.

(d) Those containing information which DIA has received from anyone, including an individual, a foreign nation, an international organization, a State or local government, a corporation, or any other organization, with the understanding, express or implied, that the information will be retained on a privileged or confidential basis; or those containing similar commercial or financial information that DIA develops internally, if the information is, in fact, the kind normally

considered privileged or confidential. The following are examples of the types of information that may be within this exemption:

(1) Commercial information such as research data, formulae, designs, drawings, and other technical data and reports which:

(i) Are significant as items of valuable property acquired in connection with research, grants, or contracts.

(ii) If owned by private parties would likely be held in confidence.

(2) Commercial and financial information received in confidence in connection with loans, bids, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions and discoveries, or other proprietary data.

(3) Statistical data and commercial or financial information concerning such matters as contract performance, income, profits, losses, and expenditures.

(4) That information customarily considered privileged or confidential under the rules of evidence in the Federal courts, such as information coming within the doctor-patient, lawyer-client, and priest-penitent privileges.

(5) Personal statements given in the course of inspections, audits, or investigations.

(6) Any other information that customarily would not be released to the public by the person from whom it was obtained.

(e) Except as provided in subparagraph (3) of this paragraph, those containing inter-Agency or intra-Agency communications:

(1) The major purpose of this exemption is to insure that internal communication and a free exchange of ideas among Agency personnel will not be inhibited. In this sense it is primarily concerned with opinions, suggestions, recommendations, evaluations, analyses, and discussions, as opposed to records of final actions taken.

(2) The following are examples of the types of material that may normally be withheld under this exemption:

(i) Staff papers that discuss a problem or contain advice, recommendations, analyses, suggestions, or evaluations.

(ii) Information received or generated by a component preliminary to a decision or action, where premature disclosure would harm the authorized appropriate purpose for which the records are being used.

(iii) Draft versions of documents.

(iv) Advice, suggestions, or reports prepared on behalf of the DIA by boards, committees, panels, conferences, councils, commissions, task forces, or similar groups that are formed by the DIA to obtain advice and recommendations.

(v) Conversations or communications between DIA personnel or between such personnel and representatives of other agencies of the Executive branch, if the conversations or communications are merely advisory or preliminary in nature and do not represent any final official action.

(vi) Advance information on such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions when such information would provide undue or unfair competitive advantage to private personal interests.

(vii) Records that are exchanged among DIA personnel or within and among Government agencies preparing for legal proceedings or anticipated proceedings before any Federal, State, or military court or regulatory body.

(viii) Records of DIA evaluations of contractors and their products or services that, in effect, constitute advice or recommendations and could be used improperly to the advantage or detriment of private interests.

(ix) Reports of proceedings to select personnel for assignment, school, promotion, retention, and similar purposes.

(3) Any such intra-Agency or inter-Agency records that would routinely be made available through the discovery process in the course of litigation with the Agency may not be withheld. However, if the material would only be made available through the discovery process by special order of the court, based on the particular needs of a litigant balanced against the interests of the Agency in maintaining its confidentiality, then the record or document should not be made available to a member of the public.

(f) Those containing information from personnel and medical files:

(1) When the sole and exclusive basis for withholding such information is protection of the personal privacy of an individual, the information should not be withheld from him or from his designated legal representative.

(2) An individual's personnel or medical files may be withheld from him or from his designated legal representative for reasons other than the protection of his personal privacy when Civil Service Commission regulations or other regulations so authorize.

(g) Those containing information from files similar to medical and personnel files where there would be a clearly unwarranted invasion of the personal privacy of an individual if the information were disclosed.

(1) Examples of similar files are those:

(i) Compiled to evaluate or adjudicate the suitability of candidates for civilian employment and the eligibility of individuals, whether civilian, military or industrial, for security clearances.

(ii) Containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action may be taken or has been taken.

(iii) Containing information about an individual's personal or financial affairs that the individual would not normally disclose publicly. Included are:

(*a*) DD Form 1555,[1] "Confidential Statement of Employment and Financial Interests—DoD Personnel."

(*b*) DD Form 1555–1,[1] "Confidential Statement of Employment and Financial Interests (for use by special DoD Employees)."

(2) In determining whether the release of information would result in a clearly unwarranted invasion of privacy, consideration should be given, in cases such as those involving alleged misconduct, to the relationship of the alleged misconduct to an individual's official duties, the amount of time which has passed since the alleged misconduct, and the degree to which the individual's privacy has already been invaded. Thus, the release of information concerning alleged misconduct which is closely related to official duties, which has occurred recently, and which has already been exposed to the public is less likely to constitute a clearly unwarranted invasion of personal privacy.

(3) When the sole and exclusive basis for withholding information is protection of an individual's personal privacy, the information should not be withheld from him or from his designated legal representative.

(4) Information from such files may be withheld from an individual or from his legal representative for reasons other than protection of his personal privacy when authorized by the Civil Service Commission regulations or other regulations.

(h) Those containing information from investigatory files compiled to enforce civil, criminal, or military law, including Executive orders or regulations validly adopted pursuant to law. Inspector general reports, auditor general reports, or other reports of inspections, investigations, or surveys that pertain to safety or the internal management, administration, or operations of the DIA.

(i) Those containing geological and geophysical information and data (including maps) concerning wells.

(j) Nevertheless, a record that falls under one of the exempted categories above should be made available to a requester if, in the judgment of the appropriate official designated under § 292.6, no significant purpose would be served by withholding it from him under the applicable exemption and if the disclosure is consistent with security requirements for the protection of classified matter.

§ 292.6 Persons authorized to disclose records requested by members of the public.

The authority to make records available to members of the public is vested in Assistant Directors, Assistant Chiefs of Staff, and separate Office Chiefs. This authority may not be delegated.

§ 292.7 Expedited handling required.

Activities at all echelons must expedite their handling of any requests (normally within 7 working days) from members of

[1] Filed as part of original document. Copies are available from Defense Intelligence Agency (DIASA), Room 2C242, Pentagon, Washington, D.C. 20301.

the public to inspect or copy records. They should make every effort to avoid creating procedural obstacles when internal DIA organizational problems arise, particularly where reorganization or transfer of functions contributes to an improperly directed request. DIA personnel shall make all reasonable efforts to assist DIASA in directing requests for records to the appropriate office.

§ 292.8 Responsibilities of the Assistant Chief of Staff, Administration.

(a) DIASA will be the central point of contact with the public. When a request for disclosure of material is received DIASA will:

(1) Determine the office of primary interest and forward the request for records to the appropriate Assistant Director, Assistant Chief of Staff, or separate Office Chief.

(2) Inform the requester as follows:

(i) Indicate when and where the requested record may be inspected. If a fee is to be charged for research (see § 292.12) indicate the cost. The requester must pay this fee before inspecting the record.

(ii) Indicate the fee required if copies of the record are desired. The requester will be furnished a copy or copies of the record only after payment of the fee.

(b) If the record is not sufficiently identified for it to be located, notify the requester that his request cannot be satisfied unless he provides further identifying information. This notification is not considered a denial for purposes of appeal under § 292.13.

(c) If the record sought was originated by another Government department or agency, refer the request directly and promptly to that agency for disposition and notify the requester. When the request is for copies of material primarily concerning a member of Congress or a Congressional committee, or for transcripts of testimony given before a Congressional committee, refer the requester to the member or committee involved.

§ 292.9 Responsibilities of disclosure authority.

Each DIA Disclosure Authority (§ 292.6) will be responsible for:

(a) Determining the final release for records under his control. After receipt of the request from DIASA and determination is made that the records are available for disclosure, the disclosure authority will forward the material to DIASA.

(b) Effecting coordination to consider disclosure when more than one element has an interest in the requested records.

§ 292.10 Responsibilities of persons authorized to refuse to make documents available.

(a) If it is determined that the records should not be made available the disclosure authority will notify DIASA stating which exemption or exemptions apply.

(b) DIASA will inform the requester, by letter, that the request is denied because the requested records contain information exempted from mandatory disclosure under 5 U.S.C., section 552(b). The letter will also inform the requester of the procedure set forth in § 292.13 for appealing the adverse decision. All denials for access will be coordinated with the General Counsel, Office of the Secretary of Defense.

(c) DIASA will keep a complete file on each case for use in the event of an appeal under § 292.13.

§ 292.11 How the public submits requests for records.

(a) *Identifying records requested.* Requests to inspect or obtain copies of records will normally be made on DIA Form 727.[1] In the event it is inconvenient to obtain the form, the request may be submitted by letter and should contain at least the following information:

(1) As complete an identification as possible of the desired record including (if known) its title or description, date, and the issuing office.

(2) With respect to matters of official record concerning civilian or military personnel, the first name, middle name or initial, surname, date of birth, and social security number of the individual concerned, if known.

(3) A statement as to whether the requester wishes to inspect the record or obtain copies of it.

(b) *Addressing requests.* Persons desiring records should address their inquiry to:

Director, Defense Intelligence Agency, Washington, D.C. 20301. Attention: DIASA.

§ 292.12 Schedule of fees.

(a) The following specific fees shall be applicable with respect to services rendered to members of the public:

(1) Searching for records, per hour or fraction thereof	$3.00
(2) Processing per hour (minimum charge ½ hour)	3.00
(3) Each electrostatic copy	.25
(4) Certification and validation with seal, each	.75
(5) Certification and validation without seal, each	.50

(b) When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or size or type thereof, the Assistant Chief of Staff/Administration is authorized to establish an appropriate fee pursuant to the criteria established in DoD Instruction 7230.7[2] "User Charges."

(c) When a request for identifiable records is made by mail, it should be accompanied by remittance of the total fee chargeable, as well as a self-addressed stamped envelope, if special mail services are desired.

(d) Fees must be paid in full prior to search for and issuance of requested copies. If uncertainty as to the existence of a record, or as to the number of sheets to be copied or certified, precludes remitting the exact fee chargeable with the request, the DIA will inform the interested party of the exact amount required.

(e) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the continental United States; or postal money order. Remittances shall be made payable to the Treasurer of the United States.

(f) A receipt for fees paid will be given only upon request. Refund of fees paid will be made only when the request cannot be serviced.

§ 292.13 Filing an appeal for refusal to make records available.

Private persons denied a record may appeal the decision to the Director, DIA. If such an appeal is made, the legal basis for the determination by the Director, DIA, to refuse to release the record will be in writing and will be prepared by the General Counsel, Office of the Secretary of Defense.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, OASD (Administration).

[F.R. Doc. 68-2387; Filed, Feb. 27, 1968; 8:45 a.m.]

[1] Filed as part of original document. Copies are available from Defense Intelligence Agency (DIASA), Room 2C242, Pentagon, Washington, D.C. 20301

[2] Filed as part of original document. Copies are available at the Publications Counter, OASD(A), Room 3B200, Pentagon, Washington, D.C. 20301, telephone 52167.

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 207—NAVIGATION REGULATIONS

Marina Del Rey, Calif.

Pursuant to the provisions of section 7, of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), paragraph (a) of § 207.619a is revised, effective on publication in the FEDERAL REGISTER, to read as follows:

§ 207.619a Marina del Rey, Calif.; restricted area.

(a) *The area.* That portion of the Pacific Ocean lying shoreward of the offshore breakwater and the most seaward 1,000 feet of the entrance channel between the north and south jetties, and basically outlined as follows:

Station	Latitude	Longitude
	° ′ ″	° ′ ″
A	33 57 46.0	118 27 39.5
B	33 57 52.3	118 27 43.6
C	33 57 48.6	118 27 48.8
D	33 57 29.8	118 27 34.7
E	33 57 30.9	118 27 29.1
F	33 57 37.4	118 27 33.8
G	33 57 42.4	118 27 23.0
H	33 57 50.6	118 27 28.3
A	33 57 46.0	118 27 39.5

* * * * *

[Regs., Feb. 1, 1968, ENGCW-ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

For the Adjutant General.

J. W. HURD,
Colonel, AGC, Comptroller, TAGO.

[F.R. Doc. 68-2410; Filed, Feb. 27, 1968; 8:47 a.m.]

PART 209—ADMINISTRATIVE PROCEDURE

Shipping Safety Fairways and Anchorage Areas, Gulf of Mexico

Correction

In F.R. Doc. 67–14229 appearing at page 17522 in the issue of Thursday, December 7, 1967, the last figure in the 20th line of § 209.135(d)(37) should read "31" instead of "41".

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Brigantine National Wildlife Refuge, N.J.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEW JERSEY

BRIGANTINE NATIONAL WILDLIFE REFUGE

Sport fishing in tidal waters from shore on Holgate Peninsula and Little Beach Island is permitted on the Brigantine National Wildlife Refuge, N.J., through December 31, 1968, except in those areas posted as closed. Fishing in the east and west freshwater pools from the exterior dikes is permitted during daylight hours from July 20 through September 21. The possession of live fish or minnows for use as bait in the freshwater pools is prohibited. The open areas, comprising 1,600 acres, are delineated on a map available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109. Sport fishing shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1968.

EUGENE E. CRAWFORD,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

FEBRUARY 6, 1968.

[F.R. Doc. 68–2389; Filed, Feb. 27, 1968; 8:45 a.m.]

PART 33—SPORT FISHING

Ankeny National Wildlife Refuge, Oreg., et al.; Correction

In F.R. Doc. 68–514, appearing on page 538 of the issue for Tuesday, January 16, 1968, the following should be deleted:

OREGON AND WASHINGTON

Umatilla National Wildlife Refuge, Post Office Box 239, Umatilla, Oreg. 97882.

JOHN D. FINDLAY,
Regional Director, Bureau of Sport Fisheries and Wildlife, Portland, Oreg.

FEBRUARY 20, 1968.

[F.R. Doc. 68–2411; Filed, Feb. 27, 1968; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 22]

DRAWBACK

Processing of Drawback Entries

Notice is hereby given that under the authority of sections 313 and 624 of the Tariff Act of 1930, as amended (19 U.S.C. 1313, 1624), it is proposed to amend (1) § 22.14, Customs Regulations, relating to certificates of importation required under some circumstances in connection with drawback entries, (2) § 22.20, Customs Regulations, relating to the liquidation of drawback entries, and (3) § 22.32, Customs Regulations, relating to drawback on rejected merchandise.

The proposed amendments are intended to minimize delays between the filing of drawback entries and the payment of drawback thereon. It has been found that these delays, in most instances, are caused by the fact either that the import entry identified on the drawback claim has not been liquidated, or that a certificate of importation has not been issued by the customs district in which the import entry was filed.

Section 22.20, Customs Regulations, provides that no drawback on exported articles manufactured with the use of imported merchandise may be allowed until the import entries covering such merchandise have been liquidated and the liquidation has become final by operation of law or by acceptance in writing by the importer. § 22.14, Customs Regulations, provides that if the merchandise identified in the drawback entry was not imported at a port in the customs district where the drawback entry is filed, the collector (now director) of the district where the merchandise was imported shall, upon application, issue to the customs officer with whom the drawback entry was filed, a certificate of importation on customs Form 5265. That certificate contains pertinent data from the import entry, including the amount of duty and tax collected. Section 22.32(b), Customs Regulations, also relates to the issuance of certificates of importation.

It is believed that the payment of drawback claims can be substantially expedited by eliminating the prohibition against payment of drawback before final liquidation of the import entries involved and by eliminating the certificate of importation and providing instead for the temporary transfer of the import entries from the district of importation to the place where the drawback entry is to be liquidated. It is further believed that these changes will not prejudice the interests of the Government or of the private parties involved.

The terms of the proposed amendment, in tentative form, are as follows:

§ 22.6 [Amended]

1. Section 22.6(f) (22), Customs Regulations, is deleted.

2. Section 22.14, Customs Regulations, is hereby amended to read as follows:

§ 22.14 Memorandum of import entries.

(a) There shall be filed with the drawback entry a memorandum, in duplicate, showing the port of entry at which merchandise identified in the drawback entry was entered, the import entry numbers, and the date of each such entry, and containing a request that the entries so identified be forwarded to the drawback liquidation unit in the customs regional headquarters at which the drawback claim is filed. A separate memorandum shall be furnished for each port of entry involved.

(b) The customs region shall forward one copy of the memorandum provided for in paragraph (a) of this section to the director of customs at the port of importation who shall forward to the requesting office each of the import entries identified in the memorandum. If the import entries cannot be forwarded promptly, an explanation for the delay shall be given immediately to the requesting customs office. Certificates of delivery filed at the port of importation shall be forwarded with the related import entries.

(c) In the case of articles withdrawn from a customs bonded warehouse, the director of customs at the port of withdrawal shall, in lieu of forwarding the import entry, furnish a copy of the duty-paid withdrawal on customs Form 7505.

3. Section 22.20, Customs Regulations, is hereby amended as follows: Paragraphs (a) and (c) are amended to read as follows:

§ 22.20 Liquidation of drawback entries.

(a) Proper drawback claims, including certificates of manufacture, may be processed at any time after the payment of estimated duties on the import entry. Liquidations of drawback claims, including certificates of manufacture, made before the liquidation of the import entry becomes final and all liquidated duties have been paid shall be based on the total amount of estimated duties paid. The certificate of manufacture or drawback entry, once liquidated, will not thereafter be adjusted by reason of the subsequent liquidation of the import entry. However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties paid, the importer (1) shall be liable for 1 percent of all increased duties found to be due on that portion of the merchandise transferred to the drawback claim, including a transfer to a certificate of manufacture, or (2) shall be entitled to a refund of 1 percent of all excess duties found to have been paid on that portion of the merchandise transferred to a drawback claim, including a transfer to a certificate of manufacture. The drawback entry and certificates of manufacture and certificates of delivery relating thereto shall have endorsed thereon a statement of agreement that drawback payments thereunder are made in accordance with the provisions of this section, and a waiver of any right to payment or refund except in accordance therewith. In the case of claims under section 313(b), Tariff Act of 1930, the claimant and manufacturer shall include on the drawback entry and certificate of manufacture the further agreement that if an unliquidated import entry is used in the liquidation of the drawback entry, and liquidation of the import entry so changes the status of the imported merchandise that it is no longer merchandise of the same kind and quality as the substituted merchandise, a further designation of eligible merchandise will be made, or the drawback received will be refunded. Liquidation of drawback claims, including certificates of manufacture, made after the liquidation of the import entry and payment of all liquidated duties shall be based on the liquidated duties which have been paid.

* * * * *

(c) Import entries shall constitute the record from which the amount of duty paid on the merchandise used shall be determined. In order to guard against errors of identification and overallowance, all merchandise identified in certificates of manufacture and drawback entries which have been liquidated shall be charged against the import entries to which they refer.

* * * * *

§ 22.32 [Amended]

4. Section 22.32, Customs Regulations, is hereby amended as follows: The next to last sentence of paragraph (b) is amended to read: "If the merchandise is returned to customs custody at a port other than at the port at which it was originally entered, and the drawback entry is to be filed at such other port, there shall be filed with the drawback entry a memorandum, in duplicate, showing the port of entry at which the merchandise was entered, the import entry numbers, and the date of each such entry, and containing a request that the entries so identified be forwarded to the port at which the drawback entry is to be filed."

(Secs. 313, 624, 46 Stat. 693, as amended, 759; 19 U.S.C. 1313, 1624)

Prior to the issuance of the proposed amendment, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Bureau of Customs, Washington, D.C. 20226, and received not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

Approved: February 20, 1968.

MATTHEW J. MARKS,
Acting Assistant Secretary of the Treasury.

[F.R. Doc. 68-2417; Filed, Feb. 27, 1968; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1001, 1002, 1003, 1004, 1015, 1016]

[Docket No. AO 14-A38-R03, etc.]

MILK IN MASSACHUSETTS-RHODE ISLAND-NEW HAMPSHIRE AND CERTAIN OTHER MARKETING AREAS

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing area	Docket No.
1001	Massachusetts-Rhode Island-New Hampshire.	AO 14-A38-R03.
1002	New York-New Jersey	AO 71-A53.
1003	Washington, D.C.	AO 293-A17.
1004	Delaware Valley	AO 160-A35.
1015	Connecticut	AO 305-A18.
1016	Upper Chesapeake Bay	AO 312-A13.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Massachusetts-Rhode Island-New Hampshire, New York-New Jersey, Washington, D.C., Delaware Valley, Connecticut, and Upper Chesapeake Bay marketing areas. Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at New York City, on June 19–23, and July 31–August 4, 1967, pursuant to notice thereof which was issued June 2, 1967 (32 F.R. 8175) and supplemental notices issued June 15, 1967 (32 F.R. 8720), and June 22, 1967 (32 F.R. 9025).

The material issues on the record of the hearing relate to the appropriate level and basis of pricing reserve milk under the six northeastern Federal milk marketing orders.

Ten proposals were submitted by interested parties for consideration at the hearing. Such proposals were variously sponsored by proprietary handlers and cooperative associations in the New York-New Jersey and Delaware Valley markets and a group of producers under the Washington, D.C., order. Proposals submitted would (1) add a butter-powder "snubber" to the present surplus pricing provisions of the six orders; (2) change to the use of the Minnesota-Wisconsin manufacturing milk price with a butter-powder "snubber" and a 10-cent lower price on milk used in butter and Cheddar cheese during March–June; (3) set the Washington, D.C., Class II price $1.00 under the Class I price; (4) change the Delaware Valley Class II price level, the seasonal adjustments and the location adjustments; (5) limit any amendments to the period through June 30, 1968; and (6) provide temporary emergency price relief for handlers.

Producer and handler interests in all six markets were represented by persons who testified at the hearing. In general, witnesses for proprietary handlers and operating cooperatives in the New York-New Jersey market took the position that the Class III price was too high, particularly during 1966. The principal bargaining cooperative in the New York-New Jersey market and the major cooperatives in the other five markets generally urged that no change be made in the present formula. However, these cooperatives generally conceded that if, notwithstanding their position, any changes were made in the New York-New Jersey order identical changes should also be made in the other orders. One cooperative urged that if any action is taken it should only be temporary.

New York-New Jersey proprietary handlers and operating cooperatives contended that the Class III price level established by the July 1962 amendments, which provided identical pricing (the U.S. average manufacturing milk price with specified seasonal adjustments) in all the northeastern orders, has continuously been too high in relation to market values of butter and cream. Accordingly, operating margins available to them have been unrealistically low, particularly during the months when the seasonal adjustments raise the price above the U.S. manufacturing milk price. They further contended that the large increase in the volume of imports of butter-sugar mixtures in 1966 and the first half of 1967 for use in ice cream seriously impeded the orderly disposition of the market's excess butterfat through traditional channels and depressed cream prices in the Northeast in relation to reserve milk prices under the order.

The situation, proprietary handlers further contended, has been aggravated by the continuing conversion from can to bulk tank handling in the New York-New Jersey market while handlers have been unable to recover hauling costs in the movement of bulk tank milk from farm to plant because of the cooperatives' position of "free" hauling. As a result, previously inadequate operating margins have been further depressed.

Proponents took the position that immediate and substantial relief was essential to continuing maintenance of necessary manufacturing facilities in the market. The position of New York handlers in this regard was supported by certain handlers in the Delaware Valley and Upper Chesapeake Bay markets.

The testimony of witnesses opposing any change in pricing stressed that the difficulties expressed by New York handlers were temporary in nature. They pointed out that the present formula has provided prices which have been competitive with other segments of the manufactured dairy products industry, and contended that, notwithstanding proponents' position, the seasonal adjustments are an important adjunct to the pricing formula to insure that milk is readily available for fluid use in the short production months and to accommodate the orderly disposal of surplus in the heavy production months.

Pending completion of the prescribed procedures based on the hearing record, interim emergency suspension action (32 F.R. 13804) was taken by the Acting Secretary on September 29, 1967, to "eliminate the seasonal variation in the amounts by which the average price for milk for manufacturing purposes, f.o.b. plants, United States, is adjusted in determining the minimum prices to be paid for reserve milk supplies in the northeastern markets."

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

The reserve milk pricing provisions of the respective orders should be changed from the use of the U.S. average price for manufacturing milk to the use of the average of prices paid for manufacturing grade milk in Wisconsin and Minnesota, limited by a price computed on the basis of butter and nonfat dry milk prices in the Chicago area. The seasonal adjustment factors should each be reduced by 5 cents.

This change will generally continue the same annual level of surplus pricing which the present formula has provided and at the same time will insure that the annual price level for reserve milk in the Northeast will not rise above a fixed margin under the market value of butter

and nonfat dry milk. It will also insure continuing alignment of reserve milk prices under the northeastern orders and the neighboring orders to the west which employ a similar formula.

While proponents contended that the surplus pricing level under the northeastern orders has been excessive since July 1962, the record evidence simply does not support this position. Federal orders generally, except those in the Northeast, employ the Minnesota-Wisconsin manufacturing milk price series as a basis for pricing surplus milk. Many of such orders employ that series without adjustment while others use the series in conjunction with a butter-powder snubber which has the effect of guaranteeing that handlers will have no less than a 48-cent operating margin in processing butter and nonfat dry milk. While the surplus milk prices in the northeastern orders are established on the basis of U.S. manufacturing milk price series, seasonally adjusted, the resulting price on an annual basis has closely approximated that under orders employing the Minnesota-Wisconsin price series with a butter-powder snubber. There is no basis on the record for changing the basic level of surplus pricing in northeastern markets. Nevertheless, appropriate revisions in the pricing formula can be made which will protect handlers against unreasonably depressed operating margins such as existed in the first 3 months of 1966.

Prior to July 1962 the New York-New Jersey Class III price was based upon the market prices of butter and nonfat dry milk. Since that time the price has been based on prices paid for manufacturing grade milk. This latter method was adopted primarily as a means of avoiding the difficulties experienced in fixing an appropriate margin to reflect costs incurred by handlers in processing milk into marketable products. Such costs tend to vary among handlers and are influenced over time by changes in technology.

During the first three years the present formula was in effect (1963–65) the level of butter-powder margins (the difference between the Class III price and the market value of the butterfat and skim milk in a hundredweight of milk based on New York butter and nonfat dry milk quotations) varied within a range of 26 cents. The variation from 12 cents below to 14 cents above the average was largely due to the specified seasonal adjustments in the Class III price formula which range from a minus 7 cents in May to a plus 15 cents in August, a variation of 22 cents.

In 1966 the level of butter-powder margins varied as much as 44 cents. The variation was, of course, in part due to the seasonal adjustments but in larger measure was a result of the erratic relationship between butter prices and prices paid for manufacturing grade milk which prevailed when open market manufactured dairy product prices were moving above price support levels.

From the effective date of the present formula (July 1962) until April 1965 the wholesale prices of butter at New York stayed virtually at the price support level of 58.75 cents per pound except for brief periods in the fall of each year. In April 1965 the price support was increased to 59.75 cents. By June 1965 the open market price of butter began to rise above the support price and remained above it through December 1966. The peak level of 74.72 cents was reached in September and the price then declined until January 1967 when it was essentially at the support level of 67.25 made effective in July 1966. During this period when butter prices were above support levels the average of prices paid for manufacturing milk as reflected in the U.S. manufacturing milk price series also increased but such prices were much less erratic than butter prices, particularly during the period of December 1965 through June 1966 when the respective prices were as follows:

	New York-New Jersey 92-score butter (cents per lb.)	U.S. average manufacturing price (dollars per cwt.)
December 1965	64.79	$3.37
January 1966	62.01	3.36
February	60.67	3.51
March	65.67	3.62
April	62.65	3.56
May	63.40	3.53
June	65.50	3.64

During the latter part of 1965 and the beginning of 1966 cheese prices increased relative to butter prices. In the first three months of 1966 cheese plants outpaid butter plants by more than 20 cents per hundredweight. The higher prices paid by cheese plants caused the manufacturing milk price to increase relative to butter values and resulted in narrowing the margins available to butter manufacturers during this period.

Gross butter-powder margins in December 1965 and the first 3 months of 1966 were the lowest of record for these months in the New York-New Jersey market. They averaged 12 cents under margins for the same period 12 months earlier. However, the average margin for the 12 months of 1966 was identical to that for 1965 and the average margin for 1967 was more than 5 cents greater, approximating the average for the years 1963 and 1964.[1]

During the past three years the annual volume of reserve milk supplies priced under the Northeast orders has ranged from seven to 8 billion pounds. The monthly volume of reserve milk has ranged from a low of about 450–500 million pounds in the fall months to a high of 750–970 million pounds in the spring months. Such reserve supplies have represented about 40 percent of the total volume of milk priced under all of the Northeast orders on an annual basis and have ranged between 30 and 50 percent of total receipts in any month.

About 70 percent of all of the reserve supplies in the six Northeast markets is priced under the New York-New Jersey order. Each month nearly two-thirds of the butterfat in this reserve supply is marketed in the form of butter, ice cream, and cream. Since butter readily can be substituted for cream in making ice cream, the market value of the butterfat in cream generally maintains a close relationship with the butter price.

During 1966 cream-powder margins maintained their traditional close relationship with butter-powder margins. However, during the first 7 months of 1967 cream-powder margins were generally unfavorable, averaging almost 15 cents below butter-powder margins. In recent months this situation appears to have been alleviated. Cream-powder margins since August have been closely aligned with butter-powder margins.

During the period of substantially increased prices of manufactured dairy products in the United States, the use of imported butterfat-sugar mixtures became widespread among many of the ice cream manufacturers in the Northeast as well as other areas of the country. The volume of butter-sugar mixture imports amounted to 106 million pounds in 1966 and 92 million pounds in the first half of 1967. Effective July 1, 1967, import quotas were made effective on such products to reduce them to an annual level of 2.58 million pounds which is approximately the same as the 1961–65 average before the import surge began. The substitution of an alternative supply of butterfat in such substantial quantity obviously has made it necessary for domestic handlers who were supplying the ice cream trade to find other outlets for much of their cream, at least for a temporary period.

The record does not provide a basis to accurately determine the volume of such butter-sugar mixtures actually used in the New York-New Jersey market. However, official notice is taken of "Statistics Relative to the Dairy Industry in New York State" (November 1967, New York Crop Reporting Service, Table 62) which shows the percentage of total butterfat from each ingredient source in ice cream mix made in wholesale frozen dessert plants in New York City as follows:

Ingredient source	Percent	
	1965	1966
Whole milk	0.4	0.8
Cream	49.0	30.7
Condensed milk	40.3	38.2
Dry milk & buttermilk	0.6	0.5
Butter	9.7	5.2
Butter-sugar		24.6
Total	100.0	100.0

The substantial reduction in the proportion of cream used in ice cream obviously disrupted traditional cream trade channels in 1966. This situation was further aggravated, beginning in November 1966 because of additional cream volumes resulting from permissive

[1] This decision makes use of certain prices of butter, nonfat dry milk, cream, manufacturing grade milk, and Federal order class prices for periods which extend beyond the dates for which the particular prices were made available on the record. For this purpose official notice is taken of the August through December 1967 summaries of "Federal Milk Order Market Statistics", USDA, C&MS, Dairy Division, which contains the prices referred to herein.

standardization of whole milk in New York State. Prior to November 1966 the standardization of milk was not permitted under New York State laws.

The volume of butterfat in cream made available because of standardization cannot be accurately determined. However, on the basis of the increased volume of skim milk subject to the fluid skim differential beginning in November 1966 under the New York-New Jersey order it appears that the aggregate butterfat content of whole milk marketed under the order has been reduced due to standardization by several million pounds in the period since November 1966.

New York-New Jersey handlers alluded to this disruption of the cream marketing situation and the associated depressed cream-powder margins in support of their request for a lower Class III price. Although such market circumstances did adversely affect handlers, they are not an appropriate basis for providing a basic reduction in the surplus price level.

The impact of additional butterfat volumes from imported butter-sugar mixtures and standardization was largely offset by a decline in milk production in the northeastern markets of over 500 million pounds from the 1965 level. Consequently, there has been little net change in the aggregate volume of butterfat in the region. Since there are very substantial butter processing facilities in the market for handling the excess cream supplies of the market, it is not readily apparent why handlers have not been able to adjust their marketing channels and dispose of their excess cream to butter processors during periods of depressed cream prices. However, handlers with excess cream contend that butter processing facilities generally are not conveniently located to their operations relative to alternative outlets in the cream trade.

Comparisons of butter-powder and cream-powder margins substantiate handlers' arguments that the combined impact of butter-sugar imports and standardization seriously depressed the cream market. It is equally apparent that cream-powder operators did not readily adjust their marketing channels to improve their position. For this reason cream-powder margins were unduly depressed in the first 7 months of 1967. However, the situation appears to have now been corrected since cream-powder margins have returned to their traditional relationship with butter-powder margins.

The scheme of surplus pricing provided under Federal orders gives handlers freedom of choice as to outlet for surplus milk. While it is recognized that some outlets are at times more remunerative than others it is up to the handlers to adjust their operations as the market situation changes. Depressed spot market cream prices are not of themselves an appropriate basis for changing the price formula since the surplus cream can be churned into butter and marketed under the price support program. Producers should not be expected to accept less for their excess supplies of butterfat than marketings under the price support program would yield.

New York-New Jersey handlers also supported a reduction in the Class III price level on the premise that bulk tank milk is priced at the farm and consequently they incur expenses not incurred in other markets in hauling such milk from farm to plant. About 60 percent of the milk priced under the New York-New Jersey order is produced on farms with bulk cooling tanks. The remainder of the milk is handled in 40-quart cans. Typically, hauling charges on can milk are deducted from payments to producers in the New York-New Jersey market.

Under the New York-New Jersey order the uniform price to producers with bulk tanks is fixed at the freight zone within which the farm is located while prices for can milk are fixed at the location of the plant where the milk is delivered. In addition, the order provides that any deduction for tank truck service provided by the handler shall not exceed 10 cents per hundredweight. However, handlers say that because the major cooperatives in the market have supported "free hauling" for farm tank milk the handlers have been unable to make hauling deductions. In any case it is customary for handlers not to charge producers for bulk hauling.

Handlers stated that the average cost of hauling bulk milk from the farm to the plant is about 16 cents per hundredweight. Since three-fifths of the milk in the market is handled in bulk tanks, it is likely that proprietary handlers' costs of surplus milk have been above that in neighboring markets where authorized hauling deductions are customarily made.

Under existing circumstances, differences in handlers' costs for milk as between markets do not provide an appropriate basis for reducing the level of the surplus price in the New York-New Jersey market. The general practice of handlers of not making use of the hauling deduction now authorized under the order, even during the recent temporary period when their operating margins were particularly low, indicates that it is competitive conditions in the market which tend to maintain handlers' costs of milk above the level provided under the order. As long as it is a common practice in the market not to deduct the permissive 10-cent hauling charge from payments to producers, it must be presumed that the Class III price level is not too high. To the extent that differences exist in the cost of surplus milk among the markets, such differences are obviously due to circumstances not controlled by the order and hence are not an appropriate basis for changing the New York-New Jersey order price.

The use of a butter-powder "snubber" will afford handlers protection against undue reductions in their operating margins when butter values are abnormally low relative to prevailing prices for manufacturing grade milk. Under the Northeastern Ohio order, which employs the Minnesota-Wisconsin series with a butter-powder snubber, the snubber set the effective price throughout 1966. If such snubber had been applied to the New York-New Jersey Class III pricing formula, the price would have averaged 11 cents less in 1966. During the months of January, February, and March, 1966, when butter-powder margins were at an all time low under the order such a snubber would have maintained the margins 23, 26, and 22 cents higher in each month, respectively. Thus, in these months handlers were faced with margins which were only about one-half the amount which they would have had if a butter-powder snubber had been provided under the order.

However, the addition of a butter-powder snubber to the present U.S. manufacturing price series would tend to provide lower average prices than those which prevail in markets employing a butter-powder snubber with the Minnesota-Wisconsin price. For example, if a butter-powder snubber had been applied to the New York-New Jersey Class III prices in 1966 it would have resulted in prices averaging 3 cents less than the surplus class prices provided under the Northeastern Ohio order. In 1967 the average annual price would have been 4 cents less than the Northeastern Ohio order price.

In the period since 1962 when the present formula was adopted, the New York-New Jersey Class III price (excluding the year 1966) has averaged $3.35, precisely the same as the price in Ohio markets employing the Minnesota-Wisconsin price series with a butter-powder snubber. It is apparent therefore that the existing pricing formula has generally provided prices which have been appropriately aligned with prices in other Federal order markets. The situation in 1966 was unique and possibly need never recur. Nevertheless, because it did result in severe financial strains on handlers of Class III milk, it is understandable that they wish to be assured that it cannot recur.

In recognition of the fact that the average U.S. manufacturing milk price averages below the Minnesota-Wisconsin manufacturing milk price, on which surplus prices are generally based in Federal order markets outside the Northeast, the seasonal adjustments to the basic price provided in the northeastern orders were constructed to increase such price on an annual basis by 5.4 cents. This, as previously indicated resulted in prices which, except for 1966, have been almost identical with those in markets using the Minnesota-Wisconsin price with a butter-powder snubber.

It is essential that such alignment of surplus prices as between markets be continued. Under such circumstances the use of the U.S. manufacturing milk price cannot appropriately be continued in conjunction with a butter-powder snubber. It is concluded, therefore, that the objectives here sought can best be achieved by substituting the Minnesota-Wisconsin price series in lieu of the presently provided U.S. manufacturing milk price.

The Minnesota-Wisconsin price series for manufacturing grade milk reflects the prices paid in these two States, where about half the total manufacturing grade milk sold off farms in the United States is produced. In Minnesota about two-thirds of the milk sold off farms is manufacturing grade, and in Wisconsin about 60 percent is manufacturing grade. Competition for this milk is strong in both States. Consequently, no individual purchaser has a significant influence upon the level of prices paid.

The two-State average price reflects a weight of about 57 percent for Wisconsin prices and 43 percent for Minnesota prices. These weights represent the proportions of the total volume of manufacturing grade milk purchased from farmers in the respective States.

The average reflects prices paid for milk in the different products which are made at plants buying such milk. In 1965, butter and byproduct plants accounted for 86 percent of all manufacturing grade milk in Minnesota. Cheese factories accounted for 11 percent and plants manufacturing varied products accounted for the remaining three percent.

In Wisconsin, plants used the following proportions of manufacturing grade milk in 1965 according to type of plant: Cheese, 59 percent; butter and byproducts, 11 percent; condenseries, 1 percent; and varied product plants, 29 percent.

The Minnesota-Wisconsin price is employed in Federal milk orders generally outside the Northeast for determining the level of surplus class prices and as a basic formula price in fixing Class I price levels. This price for manufacturing grade milk in the two-State area of Minnesota and Wisconsin is issued by the State-Federal Crop Reporting Service on about the fifth day of each month for milk received at manufacturing plants in these States in the previous month. Plant operators report that total pounds of manufacturing grade milk received from farmers, the butterfat content, and total money paid to farmers for the milk.

The manufacturing milk price for the two-State area is reported by the Department per hundredweight at actual butterfat test. The announced price is adjusted to the 3.5 percent butterfat test used in the orders by means of a butterfat differential equal to 0.12 times the average wholesale price for 92-score butter at Chicago.

Processing margins available on butter-powder in the Minnesota-Wisconsin region are currently about 48 cents and the recent trend has been downward. Margins (derived from the Minnesota-Wisconsin price and the Chicago 92-score butter price times 4.2 plus the Chicago area nonfat dry milk solids, spray process price times 8.2) dropped from 56 cents in 1962 to 46 cents in 1964. During the recent period when prices were above support levels the margins were substantially lower, averaging 42 cents in 1965 and 32 cents in 1966, but increased to 45 cents by August 1967 after butter prices were back at support levels for 6 months. Since the butter-powder snubber generally employed in other orders insures a processing allowance of 48 cents based on Chicago price quotations, it is desirable that the same formula be included in the New York-New Jersey order to insure continuing interorder price alignment.

A butter-powder snubber with a 48-cent processing margin applied to the Minnesota-Wisconsin price series as a basic price, would have provided prices which averaged 2 cents higher than the New York-New Jersey Class III price in 1963; the same in 1964; 2 cents lower in 1965; 8 cents lower in 1966; and the same average level in 1967 if the effect of the suspension action of September 29, 1967, is discounted. This formula would protect handlers from any recurrence of the severely depressed margins which they experienced in 1966 when open market prices were above support levels.

In addition, producers would have assurance that the existing average price level would be retained. Under these circumstances it is concluded that it is appropriate to replace the present basic Class III price formula with the formula employed in the neighboring orders to the west of the New York-New Jersey milkshed.

The New York-New Jersey market is by far the largest single milk market under Federal regulation. As previously indicated about 70 percent of all of the reserve supplies in the six northeastern markets is priced under the New York-New Jersey order. In the past, seasonality of pricing has been considered necessary to deter the association of milk supplies for manufacturing uses during the short production months and to implement the orderly disposition of the regular market reserve in other months. In addition, proponents for continuing seasonal pricing contend that such pricing is essential to insure full availability of all milk, as needed, for Class I use in the fall and winter months.

It is not readily apparent that seasonal pricing of surplus milk is essential to insure the availability of milk in the short production months. Both the New York-New Jersey and Massachusetts-Rhode Island-New Hampshire orders have other provisions intended to implement this result. In the other four markets the bulk of the milk supplies are associated directly with city plants and such supplies are generally fully available for Class I use as needed.

The basic problems giving rise to the hearing were in large measure confined to the New York-New Jersey market. As previously indicated that market is still in transition from can to bulk tank handling. Because of the size of the market and the institutional factors associated with it, handlers and producers are apparently experiencing considerable difficulty in making desirable adjustments to take full advantage of the greater efficiencies associated with bulk tank handling. The removal of the seasonal scheme of surplus pricing may have serious consequences in deterring the orderly marketing of the reserve milk supply, particularly at this time when proprietary handlers appear to be under considerable financial strain. It is concluded therefore that the concept of seasonal pricing of reserve milk should be continued.

Notwithstanding the above conclusion some adjustment of the seasonal factors is necessary since, as previously stated, part of the function of the existing seasonal factors was to maintain an appropriate surplus price level in recognition of the fact that the U.S. manufacturing milk price series was below the Minnesota-Wisconsin price series. With the use of the Minnesota-Wisconsin price series it is appropriate to reduce the stated monthly differentials so that their use neither increases nor decreases the basic price on an annual basis. This is accomplished by decreasing each differential by 5 cents.

The net effect of the change to the Minnesota-Wisconsin price series with a butter-powder snubber and the revised seasonal factors is to leave the annual price level unchanged except under circumstances such as existed in the first part of 1966 when the manufacturing milk price increased much more rapidly than butter values. In such circumstance the New York-New Jersey price would be held in alignment with other markets using a butter-powder snubber as would also have been the case in other years when the present formula resulted in prices well aligned with such other market prices. The effect of the change would generally lower the price during December through June and generally raise the price in other months of the year. In the last 5 years, the monthly adjustment from prices actually in effect would have been as follows:

Month	Difference from actual prices				
	1963	1964	1965	1966	1967
	Cents	*Cents*	*Cents*	*Cents*	*Cents*
January	+3	−3	−8	−20	−11
February	+3	−3	−7	−24	−4
March	+4	−2	−7	−27	0
April	+1	+1	−6	−13	0
May	0	+3	−3	−2	+1
June	+1	+1	−3	−2	+4
July	+10	+2	−1	+11	+3
August	+10	+1	+4	+8	+3
September	+3	+6	+5	+11	+7
October	+5	+3	+6	−13	+6
November	−2	+3	+3	−4	+5
December	−2	−6	−6	−12	+5

The proposals to provide for identical amendments to all of the Northeast orders should be adopted. Virtually all of the witnesses urged that if any change were made in the New York-New Jersey Class III price formula, such change should also be made in each of the other orders to maintain appropriate price alignment among the markets. The need for alignment of surplus milk prices under the orders was set forth in the April 25, 1962, decision of the Under Secretary (27 F.R. 4115), pursuant to which the present common surplus pricing formula in the orders was established. The findings and determinations in that decision relative to providing identical surplus price formulas in the orders continue to be valid and are hereby reaffirmed.

A cooperative association in the Delaware Valley market proposed that the Class II price seasonal adjustments and location adjustments in the Delaware Valley order be amended. The proposals would provide for seasonal adjustments identical to those under the Washington, D.C., and Upper Chesapeake Bay orders, and apply Class II location adjustments only beyond the 140-mile zone. The net effect of the adoption of the proposal would be a 6-cent reduction in the Delaware Valley Class II price within the 45-mile zone and 1-cent reduction within the 45–70-mile zone. This change would result in Class II prices within the 140-mile zone which are identical to the Class II prices provided under the Washington, D.C., and Upper Chesapeake Bay orders. Currently the 70–140-mile zone price is aligned with the Class II prices under the Washington, D.C., and Upper Chesapeake Bay orders which have no location adjustments on Class II prices, and is aligned with the 151–170-mile zone price under the New York-New Jersey order.

The proponent witness supported the proposal primarily as a means of insuring outlets for reserve supplies from city bottling plants at country manufacturing plants which also handle reserve supplies for the Washington, D.C., and Upper Chesapeake Bay markets. Because the Class II price at Delaware Valley city plants is 6 cents higher than the Class II price under the other two orders, operators of country manufacturing plants are reluctant to pay the higher price for supplies diverted from Delaware Valley city plants. The proposed amendment, to fix the same price at most of the locations where reserve supplies are handled under all three orders, would tend to eliminate the influence of location adjustments on handlers' ability to find an outlet for reserve milk supplies diverted from city bottling plants. However, it would also reduce the price on Class II milk processed at city plants as well as change the traditional relationship of Class II prices between country manufacturing plants and city manufacturing plants. Because of this impact of the proposed amendments, several witnesses opposed it. Witnesses for Delaware Valley country plant operators opposed any change in Class II price location adjustments between their plants and city plants. A witness for a New York-New Jersey operating cooperative opposed any change in the relationship of surplus prices between the Delaware Valley and New York-New Jersey orders.

The Delaware Valley order was amended on September 1, 1967, on the basis of a hearing held in Philadelphia on June 12–13. One of the amendments changed the application of location adjustments on milk diverted from plants in nearby zones to plants in more distant zones. The principal testimony of the proponent witness in this record relates to the influence of location adjustments on reserve milk supplies moved to country manufacturing plants. Under the circumstances it is difficult to ascertain whether the problems related by the witness continue to exist.

The impact of the proposed amendments obviously would be much broader than related on the record. Under such circumstances it is concluded that no change should be made in the Delaware Valley Class II price location adjustments on the basis of this record.

The proposal to fix the Washington, D.C., order Class II price $1 under the Class I price should not be adopted. The Class I price under the order is currently about $2.60 above the Class II price. Thus the proposal would set the Class II price about $1.60 above the prevailing value of milk for manufactured uses. Handlers could not be expected to handle surplus milk at such a price. It is clear that proponent's purpose was enhancement of producer returns and that no consideration was given to the economic consequences which would obviously result if such a price level were adopted. The Class II price level cannot be fixed above a level which will insure the orderly disposition of the necessary market reserve. Otherwise the order could not be effective in implementing the purposes of the Act. As previously indicated, the present surplus price level in Northeast markets is concluded to be appropriate and is continued under the amendments herein adopted. Accordingly, the proposal for a higher price level in the Washington, D.C., market is denied.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Certain parties in their briefs renewed their requests made on the hearing record that no testimony be taken on an alternative proposal included in a supplemental hearing notice issued after the hearing began. They contended that the issuance of the supplemental hearing notice was contrary to prescribed procedures and it delayed consideration of initial proposals.

The issuance of the supplemental hearing notice containing an alternative proposal was necessary to fully explore the matters at issue and to insure a complete record of the facts and views of interested parties on the matter. The hearing officer's rulings in this matter is affirmed and the testimony, to the extent that it is relevant to the issues under consideration, has been considered in reaching the conclusions hereinbefore set forth.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements and the orders as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the proposed marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended marketing agreements and orders amending the orders. The following orders amending the orders as amended regulating the handling of milk in the Massachusetts-Rhode Island-New Hampshire, New York-New Jersey, Washington, D.C., Delaware Valley, Connecticut, and Upper Chesapeake Bay marketing areas are recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders as hereby proposed to be amended:

AMENDMENT TO THE MASSACHUSETTS-RHODE ISLAND-NEW HAMPSHIRE ORDER

Section 1001.61 is revised to read as follows:

§ 1001.61 Class II price.

The Class II price per hundredweight of milk containing 3.5 percent butterfat, at plants located in zone 21, shall be computed for each month as specified in this section.

(a) Adjust the average price per hundredweight for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota, as reported by the U.S. Department of Agriculture for the month, to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the

Department. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(1) Multiply by 4.2 the Chicago butter price specified in this paragraph;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

(b) Adjust the result obtained in paragraph (a) of this section by the amount shown below for the applicable month:

Month	*Amount*
January	+$0.03
February	+.02
March	−.05
April	−.09
May	−.12
June	−.11
July	+.03
August	+.10
September	+.06
October	+.06
November	+.06
December	+.06

AMENDMENT TO THE NEW YORK-NEW JERSEY ORDER

1. In § 1002.40 paragraph (e) is revised to read as follows:

§ 1002.40 Class prices.

* * * * *

(e) For Class III milk, the price shall be the net amount determined pursuant to this paragraph:

(1) Adjust the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the U.S. Department of Agriculture for the month, to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(i) Multiply by 4.2 the Chicago butter price specified in this subparagraph;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(iii) From the sum of the results arrived at under subdivisions (i) and (ii) of this subparagraph subtract 48 cents, and round to the nearest cent.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month	*Amount*
January	+$0.03
February	+.02
March	−.05
April	−.09
May	−.12
June	−.11
July	+.03
August	+.10
September	+.06
October	+.06
November	+.06
December	+.06

2. In § 1002.47 paragraph (b)(8) is revoked.

§ 1002.47 Announcement of prices.

* * * * *

(b) * * *

(8) [Revoked]

AMENDMENT TO THE WASHINGTON, D.C., ORDER

In § 1003.50 paragraph (b) is revised to read as follows:

§ 1003.50 Class prices.

* * * * *

(b) *Class II price.* The price for Class II milk shall be determined for each month as follows:

(1) Adjust the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the U.S. Department of Agriculture for the month, to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(i) Multiply by 4.2 the Chicago butter price specified in this subparagraph;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(iii) From the sum of the results arrived at under subdivisions (i) and (ii) of this subparagraph subtract 48 cents, and round to the nearest cent.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month	*Amount*
January	+$0.05
February	+.04
March	−.03
April	−.07
May	−.10
June	−.09
July	+.05
August	+.12
September	+.08
October	+.08
November	+.08
December	+.08

AMENDMENT TO THE DELAWARE VALLEY ORDER

In § 1004.50 paragraph (b) is revised to read as follows:

§ 1004.50 Class prices.

* * * * *

(b) *Class II milk.* The price per hundredweight of Class II milk shall be determined for each month as follows:

(1) Adjust the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the U.S. Department of Agriculture for the month, to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(i) Multiply by 4.2 the Chicago butter price specified in this subparagraph;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(iii) From the sum of the results arrived at under subdivision (i) and (ii) of this subparagraph subtract 48 cents, and round to the nearest cent.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month	*Amount*
January	+$0.11
February	+.10
March	+.03
April	−.01
May	−.04
June	−.03
July	+.11
August	+.18
September	+.14
October	+.14
November	+.14
December	+.14

AMENDMENT TO THE CONNECTICUT ORDER

Section 1015.61 is revised to read as follows:

§ 1015.61 Class II price.

The Class II price per hundredweight of milk containing 3.5 percent butterfat at plants located in the nearby plant zone shall be computed for each month as specified in this section.

(a) Adjust the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the U.S. Department of Agriculture for the month, to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A

(92-score) bulk creamery butter per pound at Chicago, as reported by the Department. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(1) Multiply by 4.2 the Chicago butter price specified in this paragraph;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 48 cents, and round to the nearest cent.

(b) Adjust the result obtained in paragraph (a) of this section by the amount shown below for the applicable month:

Month	*Amount*
January	+$0.088
February	+.078
March	+.008
April	−.032
May	−.062
June	−.052
July	+.088
August	+.158
September	+.118
October	+.118
November	+.118
December	+.118

AMENDMENT TO THE UPPER CHESAPEAKE BAY ORDER

In § 1016.50 paragraph (b) is revised to read as follows:

§ 1016.50 Class prices.

* * * * *

(b) *Class II price.* The price for Class II milk shall be determined for each month as follows:

(1) Adjust the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the U.S. Department of Agriculture for the month, to a 3.5 percent butterfat basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of a Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the Department. Such price shall be rounded to the nearest cent but shall not exceed a price computed as follows:

(i) Multiply by 4.2 the Chicago butter price specified in this subparagraph;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound of nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(iii) From the sum of the results arrived at under subdivisions (i) and (ii) of this subparagraph subtract 48 cents, and round to the nearest cent.

(2) Adjust the result obtained in subparagraph (1) of this paragraph by the amount shown below for the applicable month:

Month	*Amount*
January	+$0.05
February	+.04
March	−.03
April	−.07
May	−.10
June	−.09
July	+.05
August	+.12
September	+.08
October	+.08
November	+.08
December	+.08

Signed at Washington, D.C., on February 21, 1968.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 68-2408; Filed, Feb. 27, 1968; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

MILK, EGGS, MEAT, AND/OR POULTRY

Pesticide Tolerances; Policy Statement

In furtherance of the implementation of the policy dealing with the establishment of tolerances for pesticide chemicals in or on raw agricultural commodities, as published in the FEDERAL REGISTER of April 13, 1966 (31 F.R. 5723), by the Departments of Agriculture and Health, Education, and Welfare, the Commissioner of Food and Drugs has encountered situations where it is impossible to establish with certainty whether finite residues of certain pesticide chemicals will be incurred in milk, eggs, meat, and/or poultry. This arises out of the inherent inadequacy of analytical methodology to demonstrate the complete absence of pesticide residues; that is, minute residues may in fact be present below the sensitivity level of the methodology available for such residues. It has been suggested that in such cases the Commissioner establish tolerances at the current sensitivity of the method. This proposal has been rejected because on occasion it would result in the establishment of tolerances at levels significantly higher than necessary. Recognizing, however, that all concerned must have a basis for evaluation, the Commissioner proposes to establish a statement of policy as set forth below.

Accordingly, under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 408, 701(a), 52 Stat. 1055, 68 Stat. 511 et seq.; 21 U.S.C. 346a, 371(a)) and delegated by him to the Commissioner (21 CFR 2.120), it is proposed that the following new section be added to Subpart A of Part 120:

§ 120.6 Pesticide tolerances regarding milk, eggs, meat, and/or poultry; statement of policy.

(a) When establishing tolerances for pesticide residues in or on raw agricultural commodities, consideration is always given to possible residues of those pesticide chemicals or their conversion products entering the diet of man through the ingestion of milk, eggs, meat, and/or poultry produced by animals fed agricultural products bearing such pesticide residues. In each instance an evaluation of all available data will result in a conclusion either:

(1) That finite residues will actually be incurred in these foods from feed use of the raw agricultural commodity including its byproducts; or

(2) That it is not possible to establish with certainty whether finite residues will be incurred, but there is a reasonable expectation of finite residues; or

(3) That it is not possible to establish with certainty whether finite residues will be incurred, but there is no reasonable expectation of finite residues.

(b) When the data show that finite residues will actually be incurred in milk, eggs, meat, and/or poultry, a tolerance will be established on the raw agricultural commodity used as feed provided that tolerances can be established at the same time, on the basis of the toxocological and other data available, for the finite residues incurred in milk, eggs, meat, and/or poultry. When it is not possible to determine with certainty whether finite residues will be incurred in milk, eggs, meat, and/or poultry but there is a reasonable expectation of finite residues in light of data reflecting exaggerated pesticide levels in feeding studies, a tolerance will be established on the raw agricultural commodity provided that appropriate tolerances can be established at the same time, on the basis of the toxicological and other data available, for the finite residues likely to be incurred in these foods through the feed use of the raw agricultural commodity or its byproducts. When it is not possible to determine with certainty whether finite residues will be incurred in milk, eggs, meat, and/or poultry but there is no reasonable expectation of finite residues in light of data such as those reflecting exaggerated pesticide levels in feeding studies and those elucidating the biochemistry of the pesticide chemical in the animal, a tolerance may be established on the raw agricultural commodity without the necessity of a tolerance on food products derived from the animal.

(c) The principles outlined in paragraphs (a) and (b) of this section will also be followed with respect to tolerances for residues which will actually be incurred or are reasonably to be expected in milk, eggs, meat, and/or poultry by the use of pesticides directly on the animal or administered purposely in the feed or drinking water.

(d) Tolerances contemplated by paragraphs (a) and (b) of this section will in addition to toxicological considerations be conditioned on the availability of a practicable analytical method to

determine the pesticide residue; that is, the method must be sensitive and reliable at the tolerance level or in special cases at a higher level where such level is deemed satisfactory and safe in light of the toxicity of the pesticide residue and of the unlikelihood of such residue exceeding the tolerance. The analytical methods to be used for enforcement purposes will be those set forth in the "Pesticide Analytical Manual" (see § 120.101 (c)). The sensitivities of these methods are expressed in that manual.

All interested persons are invited to submit their views in writing, preferably in quintuplicate, regarding this proposal within 30 days following the date of publication of this notice in the FEDERAL REGISTER. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, and may be accompanied by a memorandum or brief in support thereof.

Dated: February 19, 1968.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 68-2415; Filed, Feb. 27, 1968; 8:47 a.m.]

DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

[49 CFR Part 170]

[Docket No. HM-1; Notice No. 68-3]

RULES OF PROCEDURE

Filing and Processing of Petitions for Special Permits

On November 30, 1967, the Hazardous Materials Regulations Board published notice of proposed rule making No. 67-1 (32 F.R. 16437) requesting public comment on procedures proposed for use in prescribing hazardous materials regulations under title 18, United States Code, sections 831-835, and title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, and 1472(h)).

As a result of the comments received, the Board is issuing this supplemental notice of proposed rule making proposing a modification of a portion of the proposed regulation—§§ 170.13 and 170.15, relating to petitions for special permits or for rule making. In addition, based on a number of requests received in the comments, the Board is announcing a decision to hold a public hearing to give all interested persons an opportunity to orally state their views on the proposed regulation, as modified by this notice. The hearing will be held at 9:30 a.m., March 19, 1968, at the Department of Transportation Building, 800 Independence Avenue SW., Washington, D.C.

The hearing will be an informal one conducted by the Board. It will not be a judicial or evidentiary type of hearing, so there will be no cross-examination of persons presenting statements. A Board member will make an opening statement presenting, in brief, a history of the rule-making procedures as they relate to the shipment and carriage of hazardous materials. Interested persons will then have an opportunity to present their initial oral statements. Their statements should focus on the issues raised by the notice No. 67-1, as supplemented by this notice. After all initial statements have been completed, those persons who wish to make rebuttal statements will be given an opportunity to do so in the same order in which they made their initial statement. Additional procedures for the conduct of the hearing will be announced at the hearing.

Interested persons are invited to attend the hearing and present oral or written statements on the matters set forth herein which will be made a part of the record of the hearing. Any person who wishes to make an oral statement at the hearing should notify the Secretary of the Board by March 18, 1968, stating the amount of time required for his initial statement.

All communications concerning this hearing should be addressed to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590. A transcript of the hearing will be made. Anyone may buy a copy of the transcript from the reporter.

Several of the comments received on notice No. 67-1 were concerned with the provisions of proposed § 170.13, prescribing procedures to be followed in obtaining special permits. Several of the comments were meritorious and were helpful to the Board in pointing out areas where clarification could be accomplished. The Board therefore proposes to revise § 170.13 and its related § 170.15 as follows:

§ 170.13 Filing of petitions for special permits for waivers or exemptions.

(a) Any person may petition the Board for a special permit for a waiver or exemption from any provision of Parts 171-190 of this chapter or Part 103 of Title 14 (14 CFR Part 103).

(b) Each petition must be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590, and contain the following information:

(1) The regulatory provisions involved.

(2) The justification for the permit, including any reasons why the regulations are not appropriate, why the public interest would be served by the proposal, and the basis upon which the proposal would provide an adequate and reasonable degree of safety.

(3) A detailed description of the proposal, including when appropriate, drawings, plans, calculations, procedures, test results, previous approvals or permits, a list of specification containers, if any, to be used, a list of modified specification containers, if any, to be used, and a description of the modifications, and any other supporting information.

(4) The chemical name, common name, hazard classification, form, quantity, properties, and characteristics of the material covered by the proposal, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture.

(5) Any relevant shipping or accident experience with the container proposed.

(6) The proposed mode of transportation, and any special transportation controls needed.

(7) The name, address, and telephone number of the petitioner, and that of the motor carrier if a tank motor vehicle is to be used.

(8) A statement or recommendation regarding any changes to the regulations which would be desirable to obviate the need for similar special permits.

(c) Unless there is good reason for priority treatment, each petition is considered in the order in which it is received. To permit timely consideration, petitions should be submitted at least 45 days before the requested effective date.

§ 170.15 Processing of petitions for rule making and special permits.

(a) General: The Board considers the information submitted by the petitioner and any other available pertinent information. Unless otherwise directed by the Board, no public hearing, argument, or other proceeding is held directly on a petition before its disposition.

(b) Grants: If the Board finds that the petitioner's proposal would provide adequate safety and is otherwise justified, the Board issues the special permit under this subpart or initiates rule-making action under Subpart C of this part.

(c) Denials: If the Board finds the petitioner's proposal would not provide adequate safety or is not otherwise justified, the Board denies the petition. The Board will inform the petitioner of the basis for the denial.

(d) The treatment of confidential or proprietary material submitted by any petitioner is governed by § 7.59 of this title.

The major changes made in the above revision include clarification of the time limits for filing requests for permits. It was not the original intent of the Board to provide that a permit would not be considered unless it was filed at least 60 days before the proposed effective date. The Board's intent was to set forth a time sequence for the orderly and assured consideration of each request, for the protection and equal treatment of all petitioners. Obviously, a petitioner who files far enough ahead of time for adequate consideration should be accorded priority of consideration over another petitioner who, without good reasons, files at a later date. For these reasons, this provision has been restated to provide that, in order to permit timely consideration, petitions should be filed 45 days before the proposed effective date, and that unless good reason for priority treatment is shown, each petition will be considered in the order received. It is emphasized that all petitions will be considered, regardless of when filed, but

assurance of timely treatment cannot be given to those filed too late for adequate consideration before the requested effective date.

Several comments were made to the requirement in § 170.13(a) that the petitioner would have to prove to the Board that the proposed alternative would provide at least an equivalent degree of safety and urged that the words "adequate degree of safety" be used instead. The Board agrees with the substance of this comment and therefore proposes to delete the requirements stated in § 170.13 (a) (1) and (2) and to limit § 170.13 (b) (2) ((3) in the November 30 notice) to an "adequate and reasonable degree of safety".

With regard to § 170.13(b), several comments expressed a concern that proof of compliance with the information submission requirements would be a prerequisite to obtaining a permit. It must be emphasized that the numbered subparagraphs in that paragraph require information to be submitted, not proof to be made. The Board considers that information on the matters listed is necessary for its informed consideration of the petition for a permit and will judge its adequacy under the circumstances of each case. Without adequate information on these points, the Board cannot make any determination as to an "adequate and reasonable" degree of safety.

Other comments suggested that § 170.13(b) (5) be limited to the submission of drawings, etc. only when appropriate; that § 170.13(b) (7) be limited to "relevant" shipping experience; and that other minor language changes be made in § 170.13(b) (4). These comments have been reflected in the substitute proposal set forth above.

Finally, several comments expressed concern over the treatment of proprietary or confidential information submitted with petitions. The treatment of such information within the Department is governed by section 552 of title 5, United States Code. Specific reference to the applicable provisions governing this problem has been inserted by a cross-reference to the Department's regulation on this subject (49 CFR Part 7), which states the protection to be afforded such information.

In addition to the foregoing, the Federal Aviation Administration is considering inclusion in this part of the authority to grant deviations for carriage by air now contained in § 103.5 of the Federal Aviation Regulations (14 CFR 103.5).

In regard to water transportation, the procedures covered by this notice apply to the development of regulations (including waivers and special permits) for shippers of hazardous materials covered by Title 18 U.S.C. sections 831–835 and 49 CFR Parts 171–190. It does not apply to water transportation of bulk hazardous materials or to waiver of vessel carrier requirements which will continue to be handled by the Commandant of the U.S. Coast Guard under Title 46 U.S.C. section 170 and the regulations in 46 CFR Parts 146 and 147.

The issuance of a notice concerning revised §§ 170.13 and 170.15 do not imply that the Board will or will not make other changes in the proposal. The comments received regarding these sections were particularly susceptible to early reconsideration by the Board. The Board will give continuing consideration to all other comments received, either from the original notice, this supplemental notice, or the hearing.

Interested persons are invited to comment on this supplemental proposal by submitting such written data, views, or arguments as they may desire or by submitting views at the hearing announced herein. Written communications should identify the regulatory docket or notice number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590.

Communications received before March 27, 1968, will be considered by the Board before taking final action. All comments will be available for examination by interested persons both before and after the closing date for comments. The proposal contained in this notice may be changed in the light of comments received.

This notice is issued under the authority of Title 18, U.S.C., sections 831–835, section 9 of the Department of Transportation Act (49 U.S.C. 1657), and title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430, and 1472(h)).

Issued: February 23, 1968.

C. P. MURPHY,
Rear Admiral, For the Commandant, U.S. Coast Guard.

SAM SCHNEIDER,
Board Member, Federal Aviation Administration.

J. R. ABERNATHY,
Acting Administrator, Federal Highway Administration.

A. SCHEFFER LANG,
Administrator, Federal Railroad Administration.

[F.R. Doc. 68–2438; Filed, Feb. 27, 1968; 8:49 a.m.]

Notices

DEPARTMENT OF STATE

Agency for International Development

[Delegation of Authority 27, Amdt. 5]

ASSISTANT ADMINISTRATOR FOR ADMINISTRATION ET AL.

Delegation of Authority

Pursuant to the authority delegated to me by Delegation of Authority No. 104 as amended, from the Secretary of State dated November 3, 1961 (26 F.R. 10608), I hereby direct that Delegation of Authority No. 27 be, and it is hereby further amended, as follows:

SECTION 1. Amend the title to section I to read as follows: "The Assistant Administrator for Administration is hereby authorized to exercise the following authorities with respect to all personnel of the Agency whether assigned to the United States or abroad."

SEC. 2. Amend section I as follows:

(a) In paragraph numbered 1 add the word "detail" immediately following the word "appoint,";

(b) In paragraph number 3(a) immediately preceding the semicolon, add the following: ", and with respect to persons to be compensated at rates in excess of those provided for GS–15 to sign and issue the formal notification (Standard Form 50) covering the approved personnel action of such persons";

(c) In paragraph numbered 9, immediately preceding the semicolon, insert the following, ", and to approve leaves of absences for Chiefs of Mission Class 2, Class 3 and Class 4";

(d) Add the following new subsection at the end thereof:

(20) To authorize the employment or assignment of officers or employees by agencies of the U.S. Government pursuant to section 625(d)(1) of the Foreign Assistance Act of 1961 as amended, and when agreed to by AID and another U.S. Government agency, to authorize and approve for personnel of such agency and their dependents travel, transportation and storage of effects, including motor vehicles, and related expenses.

Amend section II as follows:

(a) Amend the title to read as follows: "To the Assistant Administrators for regions and for Viet-Nam and to the Director, Office of Public Safety:"

(b) Insert new subtitle lettered "A", immediately following the title and preceding the paragraph numbered "1":

The Assistant Administrator for Viet-Nam and the Assistant Administrator for Latin America and U.S. Coordinator for the Alliance for Progress, each for the countries or areas within their responsibility, except with respect to actions relating to Mission Directors, Deputy Mission Directors, and AID Representatives, are hereby authorized to exercise the following authorities:

(c) Insert new paragraph with subtitle lettered "B", following the paragraph numbered 17:

The Assistant Administrator for the Near East and South Asia, the Assistant Administrator for Africa, the Assistant Administrator for East Asia, each for the countries or areas within their responsibility, and the Director, Office of Public Safety, except with respect to actions relating to Mission Directors, Deputy Mission Directors, and AID Representatives, are hereby authorized to exercise the following authorities:

1. To authorize and approve travel and transportation of effects for experts and consultants appointed for overseas duty;

2. To authorize and approve leaves of absence without pay for foreign service personnel;

3. To approve leaves of absence for Mission Directors, including Chiefs of Mission Class 3 and Class 4, and AID Representatives;

4. To authorize salary step increases for persons serving pursuant to section 631 of the Foreign Assistance Act of 1961, as amended.

SEC. 3. For a transitional period, redelegations of authority by the Assistant Administrator for the Near East and South Asia, the Assistant Administrator for Africa, the Assistant Administrator for East Asia, and the Director, Office of Public Safety, set forth in section II of Delegation of Authority No. 27, as amended through Revision No. 4, or redelegations of personnel authority set forth in any other specific delegation of authority shall continue in effect according to their terms but shall be subject to such revisions, modifications, and revocations as may be authorized by me, the Assistant Administrator for Administration, or the Director, Office of Personnel and Manpower, as appropriate, from time to time. Similarly, personnel authorities previously reserved to the Assistant Administrator for the Near East and South Asia, the Assistant Administrator for Africa, the Assistant Administrator for East Asia, and the Director, Office of Public Safety, to be exercised by themselves shall continue to be exercised by such officers until modified, revoked, or rescinded by the Assistant Administrator for Administration or the Director, Office of Personnel and Manpower. These authorities are being left undisturbed for the immediate future to insure that there is no breakdown in the required continuing work flow. As the new centralized personnel operation takes form over the next 90 days, appropriate actions will be taken to further finalize the centralization of personnel authorities.

This Delegation of Authority is effective February 19, 1968.

RUTHERFORD POATS,
Acting Administrator.

FEBRUARY 17, 1968.

[F.R. Doc. 68–2398; Filed, Feb. 27, 1968; 8:46 a.m.]

[Redelegation of Authority 2]

DIRECTOR, OFFICE OF PERSONNEL AND MANPOWER

Delegation of Authority Regarding Personnel

Pursuant to the authority delegated to me by Delegation of Authority No. 27, as amended, from the Administrator, I hereby redelegate to the Director, Office of Personnel and Manpower, the authority to exercise all the authorities set forth in section I of that Delegation with respect to all personnel of the agency for International Development, whether assigned to the United States or overseas, to the extent such provisions are applicable to such categories of personnel. Further, I hereby authorize the Director, Office of Personnel and Manpower to amend, modify, or revoke any of the redelegations of authority relating to personnel which were continued in effect by section 3 of Amendment 5 to Delegation of Authority No. 27 and to redelegate and reassign such authority to such officers and employees as he shall designate, including the authority to authorize successive redelegations of such authority.

This Delegation of Authority is effective February 19, 1968.

ROBERT W. HERDER,
Acting Assistant Administrator for Administration.

FEBRUARY 17, 1968.

[F.R. Doc. 68–2399; Filed, Feb. 27, 1968; 8:46 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Bureau Order 551, Amdt. 114]

AREA DIRECTOR, FORT PECK

Delegation of Authority Regarding Tribal Programs

FEBRUARY 20, 1968.

Section 333 of Bureau Order 551 (an order by which the Commissioner of Indian Affairs delegates authority to Bureau officials) is amended by deletion of the exception relating to approval of rates of salaries and expenses of tribal officials or representatives. This amendment will confer upon the Area Director

having jurisdiction over Fort Peck tribal affairs, authority to approve the expenditure of tribal funds for all such purposes as may be designated by the Fort Peck Tribal Executive Board.

As so amended, section 333 reads as follows:

SEC. 333 *Expenditure of Fort Peck tribal funds.* The advance to the tribes and the approval of the expenditure of tribal funds for such purposes as may be designated by the Fort Peck Tribal Executive Board pursuant to the act of June 29, 1954 (68 Stat. 329).

ROBERT L. BENNETT,
Commissioner.

[F.R. Doc. 68-2390; Filed, Feb. 27, 1968; 8:45 a.m.]

Bureau of Land Management

[Serial No. I-1385]

IDAHO

Notice of Opening of Lands

FEBRUARY 20, 1968.

1. Notice is hereby given that in accordance with the regulations in 43 CFR Part 2411, the Bureau motion classification dated April 12, 1965, classifying the following described lands as suitable for public sale, was revoked February 8, 1968, insofar as it affected these lands:

BOISE MERIDIAN

T. 1 N., R. 3 W.,
Sec. 5, lots 3, 4, S½NW¼, E½SW¼, W½SE¼;
Sec. 6, lots 8, 9, SE¼NE¼.
T. 2 N., R. 3 W.,
Sec. 31, SW¼NE¼, E½NW¼, NE¼SW¼, SE¼;
Sec. 32, NW¼SW¼, S½SW¼.

The area described aggregates 854.78 acres.

2. These lands are hereby opened to the operation of the public land laws generally. All valid applications received prior to 10 a.m. March 15, 1968, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

ORVAL G. HADLEY,
Manager, Land Office.

[F.R. Doc. 68-2391; Filed, Feb. 27, 1968; 8:45 a.m.]

NEVADA

Notice of Filing of Plat of Survey and Order Providing for Opening of Lands

FEBRUARY 20, 1968.

1. The Plats of Survey of lands described below will be officially filed at the Nevada Land Office, Reno, Nev., effective 10 a.m., on March 29, 1968.

MOUNT DIABLO MERIDIAN, NEVADA

T. 19 N., R. 43 E. (Group 414).

2. The surveyed area of the described lands aggregates 10,571.27 acres. The plat was accepted November 2, 1967. Located in the Reese River Valley, the land is rolling with a westerly slope with an elevation range of about 5,800 to 7,300 feet above sea level. The soil is sandy loam and rocky; vegetation consists of sagebrush and sparse native grasses; timber is pinon pine and juniper very scattered. Mineral formations are in evidence. Principal access to the area is by U.S. Highway 50 and State Highway 8A.

3. Subject to any existing valid rights and the requirements of applicable law, the above-described lands are hereby opened to filing applications, selections, and location, except for applications under the Small Tract, Desert Land, and Homestead Laws, in accordance with the following: Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of the order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs: Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of such claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph. All valid applications and selections under the nonmineral public land laws presented prior to 10 a.m., March 29, 1968, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

4. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications, which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations. Inquiries concerning these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, 300 Booth Street, Reno, Nev. 89502.

A. JOHN HILLSAMER,
Acting Manager,
Nevada Land Office.

[F.R. Doc. 68-2392; Filed, Feb. 27, 1968; 8:45 a.m.]

Fish and Wildlife Service

[Docket No. LE-31]

DAVID E. BLAIR

Notice of Loan Application

FEBRUARY 23, 1968.

David E. Blair, 10731 Elmhurst, Luna Pier, Mich. 48145, has applied for a loan from the Fisheries Loan Fund to aid in financing the construction of a new 36-foot length steel fishing vessel to engage in the fishery for white perch, yellow perch, pike, catfish, white bass, suckers, carp, buffalofish, and bullheads.

Notice is hereby given pursuant to the provisions of Public Law 89-85 and Fisheries Loan Fund Procedures (50 CFR Part 250, as revised August 11, 1965) that the above entitled application is being considered by the Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Any person desiring to submit evidence that the contemplated operations of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, Bureau of Commercial Fisheries, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operations of the vessel will or will not cause such economic hardship or injury.

J. L. MCHUGH,
Acting Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 68-2402; Filed, Feb. 27, 1968; 8:46 a.m.]

[Docket No. Sub-B-15]

BOAT PAT-SAN-MARIE, INC.

Notice of Hearing

FEBRUARY 23, 1968.

Notice was published in the FEDERAL REGISTER of February 1, 1968, as F.R. Doc. 68-1211, that Boat Pat-San-Marie, Inc., had applied for permission to transfer the operations of the 100-foot LOA fishing vessel "Pat-San-Marie," constructed with the aid of a fishing vessel construction-differential subsidy, from the fishery for scallops, groundfish, and flounder to the fishery for scallops, groundfish, flounder, and herring, and that a hearing in the matter of the application would be held on March 7, 1968, at 10 a.m., e.s.t.

Boat Pat-San-Marie, Inc., has reapplied for permission to transfer the operations of the subsidized fishing vessel "Pat-San-Marie" from the fishery for scallops, groundfish, and flounder to the fishery for scallops, groundfish, flounder, herring, swordfish, tuna, lobster, shrimp, and fish for industrial uses.

Notice is hereby given pursuant to the provisions of the U.S. Fishing Fleet Improvement Act (Public Law 88-498) and notice and hearing on subsidies (50 CFR Part 257) that a hearing in the matter of the reapplication will be held on March 29, 1968, at 10 a.m., e.s.t., in Room 3356, Interior Building, 18th and C Streets NW., Washington, D.C. Any person desiring to intervene must file a petition of intervention with the Director, Bureau of Commercial Fisheries, as prescribed in 50 CFR Part 257 at least 10 days prior to the date set for the hearing. If such petition of intervention is granted, the place of the hearing may be changed to a field location.

Telegraphic notice will be given to the parties in the event of such a change along with the new location.

J. L. McHUGH,
Acting Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 68-2403; Filed, Feb. 27, 1968; 8:46 a.m.]

[Docket No. G-399]

MURDOCK C. AND ALMA T. PITTS

Notice of Loan Application

FEBRUARY 23, 1968.

Murdock C. Pitts and Alma T. Pitts, 5302 Williams Drive, Fort Myers, Fla. 33931, have applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used 50.6-foot registered length wood vessel to engage in the fishery for shrimp.

Notice is hereby given pursuant to the provisions of Public Law 89-85 and Fisheries Loan Fund Procedures (50 CFR Part 250, as revised Aug. 11, 1965) that the above entitled application is being considered by the Bureau of Commercial Fisheries, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, Bureau of Commercial Fisheries, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operations of the vessel will or will not cause such economic hardship or injury.

J. L. McHUGH,
Acting Director,
Bureau of Commercial Fisheries.

[F.R. Doc. 68-2404; Filed, Feb. 27, 1968; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

UNIVERSITY OF MICHIGAN ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 68-00373-00-54800. Applicant: University of Michigan, Department of Ophthalmology, 5044 Kresge II, Ann Arbor, Mich. 48104. Article: Optical bench components. Manufacturer: Precision Tool and Instrument Co., Ltd., United Kingdom. Intended use of article: The article will be used to replace parts of existing scientific instruments used in research on the physiology of the eye and for instructional purposes. Application received by Commissioner of Customs: February 8, 1968.

Docket No. 68-00374-01-77030. Applicant: Wayne State University, Detroit, Mich. 48202. Article: Nuclear magnetic resonance spectrometer, Model JNM-AI-100. Manufacturer: Japan Electron Optics Laboratory, Japan. Intended use of article: The article will be used in the education of graduate students in the general areas of analytical, inorganic, organic, and physical chemistry, in the further training of postdoctoral research associates and in fundamental research the general areas of chemistry mentioned above. Application received by Commissioner of Customs: February 8, 1968.

Docket No. 68-00375-33-46500. Applicant: University of Florida, Department of Pathology, College of Medicine, Gainesville, Fla. 32601. Article: LKB Ultrotome III ultramicrotome 8800A and specimen holders. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used to prepare materials for observation with an electron microscope. The exact nature of the materials to be sectioned by the ultrotome will be variable, depending on the selective needs of the electron microscopist in relationship to the projects undertaken. Application received by Commissioner of Customs: February 8, 1968.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68-2385; Filed, Feb. 27, 1968; 8:45 a.m.]

UNIVERSITY OF WASHINGTON

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C. 20230.

Docket No. 68-00098-33-57050. Applicant: Department of Botany, University of Washington, 344 Johnson Hall, Seattle, Wash. 98105. Article: Magnetic oxygen analyzer, magnos 2. Manufacturer: Hartmann and Braun, West Germany. Intended use of article: Measuring oxygen exchange, both in light and dark, of plant materials with special reference to coniferous leaves. Comments: Comments have been received from one domestic manufacturer which alleges inter alia that "equivalent instruments have been manufactured by Beckman Instruments, Inc. since 1941 * * *" (Letter from Beckman Instruments, Inc. (Beckman) dated Oct. 20, 1967.) Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: The foreign article is intended for measuring cellular oxidation and photosynthesis of green plant tissue. For this purpose, it is necessary to have an instrument capable of measuring oxygen with an accuracy at least in the range of 100 to 200 parts per million. This level of accuracy can be attained only if the instrument has the capacity for making the suppressed-zero adjustment to permit the full-scale reading of oxygen concentrations of 1 percent or less. The only known domestic instrument having this capacity is the Beckman E2 oxygen analyzer. However, as indicated on page 5 of the November 1966 issue of the Analyzer which is published by Beckman Instruments, Inc. (copy of page 5 attached to application), the Beckman Model E2 is subject to errors due to changes in barometric pressure to the extent that a 1 percent change in barometric pressure can lead to an error in the order of 2,000 parts per million. We also note that on page 3 of the Beckman Bulletin No. 7081, the accuracy specification for the oxygen analyzers described in this bulletin assumes that the total pressure remains constant. In the case of the foreign article, normal fluctuations in pressure will produce errors which fall within the 100 to 200 parts per million range, since the foreign article was designed for minimal interference of barometric pressures. We have been advised by the Department of Health, Education, and Welfare (HEW) (memorandum dated

Oct. 31, 1967) that the research problem of the applicant "establishes high sensitivity and freedom from errors introduced by pressure fluctuation, as pertinent characteristics". The National Bureau of Standards (NBS) in a memorandum dated February 9, 1968, also advised us that the Beckman Model E2 is not of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used.

For the foregoing reasons, we find that the Beckman Model E2 oxygen analyzer is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68-2384; Filed, Feb. 27, 1968; 8:45 a.m.]

VIRGINIA POLYTECHNIC INSTITUTE AND ORANGE COUNTY COMMUNITY COLLEGE

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Office of Scientific and Technical Equipment, Department of Commerce, Room 5123, Washington, D.C.

A copy of each comment filed with the Director of the Office of Scientific and Technical Equipment must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains; and the comment filed with the Director must certify that such copy has been mailed or delivered to the applicant.

Docket No. 68-00368-01-77040. Applicant: Virginia Polytechnic Institute, Department of Chemistry, Blacksburg, Va. 24061. Article: Mass spectrometer. Manufacturer: Hitachi-Perkin Elmer, Japan. Intended use of article: The article will be used for research by the instruction staff in collaboration with both graduate and undergraduate students. The results of this research will constitute material contribution towards the acadmic degrees sought by the students and will normally be published in the scientific literature. Application received by Commissioner of Customs: February 5, 1968.

Docket No. 68-00369-33-46040. Applicant: Orange County Community College, 115 South Street, Middletown, N.Y. 10940. Article: Electron microscope, Model EM 9 A. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use of article: The article will be used in training medical technologists in the field of electron microscopy. Specimens used for training technicians will be bacteria and animal tissues with emphasis on techniques to demonstrate ultrastructure and cellular organelles. Application received by Commissioner of Customs: February 6, 1968.

CHARLEY M. DENTON,
Director, Office of Scientific and Technical Equipment, Business and Defense Services Administration.

[F.R. Doc. 68-2386; Filed, Feb. 27, 1968; 8:45 a.m.]

Office of the Secretary

[Dept. Order 2-A, Amdt. 1]

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

Delegation of Authority

The following amendment to the order was issued by the Acting Secretary of Commerce on February 14, 1968. This material amends the material appearing at 31 F.R. 10752 of August 12, 1966.

Department Order 2-A, dated August 1, 1966, is hereby amended as follows:

In section 3 *Delegation of authority*, subparagraph .01j, is redesignated as .01k, and a new subparagraph .01j is added to read:

j. Sections 3b and 4 of Bureau of the Budget Circular A-16 of May 6, 1967, pertaining to establishment and maintenance of the National Networks of Geodetic Control, and to the development and execution of a coordinated national program of geodetic surveys, provided, however, that instructions to other Federal agencies for submission to the Administration of their needs for geodetic surveys or their plans for performing or contracting for such surveys, may be issued only by, or with the prior approval of, the Assistant Secretary for Science and Technology; and,

Effective date: February 14, 1968.

DAVID R. BALDWIN,
Assistant Secretary for Administration.

[F.R. Doc. 68-2400; Filed, Feb. 27, 1968; 8:46 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

UNIROYAL, INC.

Notice of Withdrawal of Petition Regarding Pesticides

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), the following notice is issued:

In accordance with § 120.8 *Withdrawal of petitions without prejudice* of the pesticide regulations (21 CFR 120.8), Uniroyal, Inc., Bethany, Conn. 06525, has withdrawn its petition (PP 8F0682), notice of which was published in the FEDERAL REGISTER of January 20, 1968 (33 F.R. 771), proposing the establishment of tolerances for residues of a herbicide consisting of tris-(2,4-dichlorophenoxyethyl) phosphite and bis-(2,4-dichlorophenoxyethyl) phosphite in or on the raw agricultural commodities corn (field and sweet), peanuts, potatoes, and strawberries at 0.1 part per million.

Dated: February 20, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-2416; Filed, Feb. 27, 1968; 8:47 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPUTY ASSISTANT SECRETARY FOR HOUSING ASSISTANCE

Redelegations of Authority

The Deputy Assistant Secretary for Housing Assistance is hereby authorized, with respect to employees or positions under his jurisdiction, to:

1. Designate the official or officials to serve as Acting Deputy Assistant Secretary for Housing Assistance.

2. Designate the official or officials to serve in an acting capacity during the absence of the appointee to a position or during a vacancy in a position.

3. Authorize the head of an organizational unit to designate one or more subordinate employees to serve as acting head of such unit during the absence of the head of the unit, or to serve in an acting capacity in any other position in the unit during the absence of the appointee to such position or during a vacancy in such position.

(Secretary's delegations effective July 1, 1966 (31 F.R. 8964, 8965, June 29, 1966, as amended))

Effective date. These redelegations of authority shall be effective as of February 28, 1968.

DON HUMMEL,
Assistant Secretary for Renewal and Housing Assistance.

[F.R. Doc. 68-2412; Filed, Feb. 27, 1968; 8:47 a.m.]

REGIONAL ADMINISTRATORS AND DEPUTY REGIONAL ADMINISTRATORS

Redelegations of Authority With Respect to College Housing Program and Program of Housing for Elderly or Handicapped

SECTION A. *Authority redelegated with respect to College Housing Program and Program of Housing for Elderly or Handicapped.* Each Regional Administrator and each Deputy Regional Administrator of the Department of Housing and Urban Development is hereby authorized to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the following programs except as specified under this section A and as additionally specified under section B:

1. College Housing Program under Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749–1749c).

2. Program of Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q), except the authority to:

a. Approve applications and authorize loans.

b. Authorize loan increases in excess of 10 percent of the original loan amount.

SEC. B. *Additional authority excepted.* There is further excepted from the authority redelegated under section A the power to:

1. Establish the rate of interest on Federal loans.

2. Issue notes or other obligations for purchase by the Secretary of the Treasury.

3. Exercise the powers under section 402(a) and under section 402(c) (1), (2), (3), (4), (5), (6), and (7) of the Housing Act of 1950, as amended (12 U.S.C. 1749a(a) and 1749a(c)(1)–1749a(c)(7)).

SEC. C. *Additional authority redelegated.* Each Regional Administrator and each Deputy Regional Administrator is authorized to redelegate to one or more employees under his jurisdiction the authority redelegated under section A except the authority to approve applications and authorize loans under the College Housing Program.

SEC. D. *Additional authority redelegated for Region VI.* The Regional Administrator and the Deputy Regional Administrator, Region VI, each is further authorized to redelegate to the Director for Northwest Operations, Region VI, any of the authority redelegated under section A.

(Secretary's delegations to Assistant Secretary for Renewal and Housing Assistance effective July 1, 1966 (31 F.R. 8968, June 29, 1966))

Effective date. These redelegations of authority shall be effective as of February 28, 1968.

DON HUMMEL,
Assistant Secretary for Renewal and Housing Assistance.

[F.R. Doc. 68-2413; Filed, Feb. 27, 1968; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-234]

GULF GENERAL ATOMIC, INC.

Order Extending Completion Date

Gulf General Atomic, Inc., of San Diego, Calif., having filed a request dated February 2, 1968, for extension of the latest completion date specified in Construction Permit No. CPCX-28 and good cause having been shown for extension of said date, pursuant to section 185 of the Atomic Energy Act of 1954, as amended, and § 50.55 of the Commission's regulations:

It is hereby ordered that the latest completion date for Construction Permit No. CPCX-28 is extended to April 1, 1968.

Date of issuance: February 16, 1968.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director, Division of Reactor Licensing.

[F.R. Doc. 68-2383; Filed, Feb. 27, 1968; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket Nos. 10920, 18381; Order No. E-26393]

NON-PRIORITY MAIL RATE CASE

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 23d day of February 1968.

The Postmaster General filed a motion on January 31, 1968, to amend Order E-17255 to extend the application of the multielement domestic rates for the transportation by aircraft of first-class mail on a space available basis, to include St. Croix and St. Thomas in the Virgin Islands.[1]

In support of this motion, the Postmaster General states that the Virgin Islands are included within the U.S. domestic postal system (39 CFR 112.1), and airmail is presently being dispatched directly between these islands and the 48 contiguous States on Pan American World Airways, Inc.; that despite this direct routing of airmail, first-class mail must be transported to San Juan, P.R., for rehandling and redispatch to an interisland carrier; and that direct dispatches between the Mainland and the Virgin Islands, in addition to eliminating the costs incurred due to the intermediate handling at San Juan, would expedite the delivery of this mail. No answers have been filed in response to this motion.

In view of the circumstances set forth by the Postmaster General, it has been concluded that the Board should propose amendment of the nonpriority mail rate order E-17255, July 31, 1961 (34 C.A.B. 143), so as to extend the application of the existing multielement rate for nonpriority mail to services between the 48 contiguous States, on the one hand, and St. Croix and St. Thomas, the Virgin Islands, on the other.

Therefore, the Board has tentatively found and concluded that:

(1) There is presently in effect a temporary service mail rate for the transportation of nonpriority mail which was established by Order E-17255.

(2) The fair and reasonable temporary rate of compensation to be paid for the transportation of nonpriority mail between the 48 contiguous States on the one hand, and St. Croix and St. Thomas in the Virgin Islands, on the other, the facilities used and useful therefor and the services connected therewith, is the service mail rate established by Order E-17255, as amended.

(3) The findings and conclusions regarding the nonpriority mail rate shall be implemented by the following amendment:

(A) Paragraph B of Order E-17255, July 31, 1961, shall be amended to read as follows:

B. The rates fixed and determined herein shall be applicable only to the transportation by air of nonpriority mail, i.e., such first-class mail, other than airmail and air parcel post, which may be tendered from time to time by the Post Office Department and carried on a voluntary, space-available basis, between any points within the 48 contiguous States and between any point within them and Agana, Anchorage, Cordova, Fairbanks, Hilo, Honolulu, Juneau, Ketchikan, Kodiak, San Juan, St. Croix, St. Thomas, Wake Island, or Yakutat and between Honolulu, Hawaii, on the one hand, and Agana, Guam, and Wake Island, on the other.

(4) The temporary service mail rates here fixed and determined are to be paid in their entirety by the Postmaster General.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof:

It is ordered, That:

1. All interested persons and particularly Airlift International, Inc., Caribbean-Atlantic Airlines, Inc., Eastern Air Lines, Inc., Pan American World Airways, Inc., Trans Caribbean Airways, Inc., and the Postmaster General are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the temporary rates specified above;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and, if there is any objection to the rates or to the other findings and conclusions proposed herein, notice thereof shall be filed within 10 days after the date of service of this order, and if notice is filed, written answer and supporting documents shall be filed within 30 days after date of service of this order;

[1] Order E-17255, dated July 31, 1961, has been amended in the past to include Guam (E-24247, of Sept. 30, 1966); Wake Island (E-26051, of Nov. 29, 1967); and Hilo, Hawaii (E-26117, Dec. 13, 1967).

3. If notice of objection is not filed within 10 days, or if notice is filed and if answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the temporary rates specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable rates herein shall be limited to those specifically raised by such answers except as otherwise provided in 14 CFR 302.307;

5. Notwithstanding the fixing and determining of the temporary rate for nonpriority mail as set forth above, this proceeding shall remain open as to such rate pending the entry of an order fixing the final rate in Docket 18381;

6. This order shall be served upon the parties enumerated in paragraph 1 above.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-2420; Filed, Feb. 27, 1968; 8:48 a.m.]

[Docket No. 18577; Order No. E-26398]

OZARK AIR LINES, INC.

Order Regarding Certificate of Public Convenience and Necessity

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 23d day of February 1968.

On November 14, 1967, the Board issued an order to show cause (E-25971) in which it tentatively found and concluded that Ozark's certificate of public convenience and necessity for Route 107 should be amended by adding a new segment between the terminal point Waterloo, Iowa, the intermediate points Peoria, Springfield, and Champaign/Urbana, Ill., and Washington, D.C. (to be served through Dulles International Airport), and the terminal point New York, N.Y., subject to a number of restrictions.[1]

Statements urging that the tentative findings and conclusions made in Order E-25971 be made final were filed by the Greater Peoria Airport Authority; the city of Sioux City and the Sioux City Chamber of Commerce, Iowa; and the city of Sioux Falls, and the Sioux Falls Chamber of Commerce, S. Dak.

Objections to the finalization of the tentative findings and conclusions made by the Board were filed by American Airlines, Inc., United Air Lines, Inc., and the city of Chicago, Ill.

Upon consideration of the foregoing pleadings we have decided to set this case down for hearing, limited to the issues set forth in Order E-25971. Accordingly, we shall deny the petition for reconsideration filed by the city of Lincoln, Nebr., and the Airport Authority of the City of Lincoln in which they request that Lincoln be added to the cities considered for direct East Coast service by Ozark under Order E-25971.[2] In support of its petition, Lincoln alleged that: Lincoln's traffic is generally greater than that of the points selected for service in the order; Lincoln's need for improved service is greater than the need of those points; Lincoln is located in the geographical area to be benefited so that its inclusion would make sense from an operational standpoint; the addition of Lincoln would strengthen Ozark; this proposal would tend to relieve congestion at Chicago; and no carrier is in a position seriously to object to the inclusion of Lincoln.[3]

Ozark Airlines, Inc. answered Lincoln's petition stating that it desired to serve Lincoln;[4] that it would not, however, offer at this time any specific proposal to serve Lincoln; that Ozark opposes any delay in the granting of the precise authority already proposed by the Board; and that if the Board decides to issue a separate show cause order for Lincoln, Ozark will offer a specific proposal for service to Lincoln 60 days after the Board's final order in this proceeding.

Frontier Airlines, Inc., filed an answer in opposition to Lincoln's petition. In support of its answer, Frontier alleged that it carries a substantial volume of interline traffic destined to or originating at New York and Washington which would be diverted to Ozark's services under Lincoln's proposal; that such diversion would impair Frontier's services between Lincoln and Kansas City/St. Louis and would jeopardize the improvement of Frontier's service in the latter markets.

Upon consideration of the foregoing pleadings, as stated above, we have decided to deny Lincoln's petition for reconsideration.[5] Unlike the other midwest points at issue in the proceeding, Lincoln is not served by Ozark at this time and inclusion of a Lincoln issue would require consideration of the need for an additional carrier at that city as well as the competitive impact on existing carriers. In addition, other carriers could file Lincoln applications which would add a further element of controversy concerning Lincoln-to-the-east service needs. This may be contrasted with the present posture of the case as an examination of improvements in service to certain points on Ozark's existing system.

Accordingly, it is ordered, That:

1. The motion of the city of Lincoln, Nebr., and the Airport Authority of the City of Lincoln, Nebr., for leave to file an otherwise unauthorized document be and it hereby is granted;

2. The motion of Ozark Air Lines, Inc., for leave to file otherwise unauthorized documents be and it hereby is denied;

3. The petition for reconsideration of the city of Lincoln, Nebr., and Airport Authority for the City of Lincoln, Nebr., be and it hereby is denied;

4. An investigation designated as the Ozark Exension to New York/Washington Investigation, be and it hereby is instituted in Docket 18577 pursuant to sections 404(a) and 401(g) of the Federal Aviation Act of 1958, as amended; and

5. The issues in the investigation instituted herein shall be limited to the issues set forth in Order E-25971, November 14, 1967.

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[1] (1) Flights over the new segment shall serve both (a) Washington or New York, and (b) Peoria, Springfield, Champaign/Urbana, or Waterloo, Iowa; (2) single-plane service shall not be scheduled between Washington or New York, on the one hand, and Chicago, St. Louis, Tulsa, Kansas City, Omaha, or Minneapolis/St. Paul, on the other; and (3) Washington and New York will not be deemed "stations" for subsidy purposes, and flights serving those points will be ineligible for subsidy in their entirety as operated, regardless of their points of origin or termination.

[2] Lincoln has stated that if the Board feels it cannot delay the present proceeding for the few weeks that would be required to process an amendment to the present order, Lincoln requests that a separate but similar show cause order be issued for Lincoln or that the matter be otherwise considered in an expedited manner. Lincoln, however, other than the support it supplied for its petition for reconsideration, provided no support for this additional request. In any event, our denial of Lincoln's petition is not predicated upon the premise that the grant of the petition would delay the present proceeding for the few weeks that would be required to process an amendment to the order; thus, no action on this additional request of Lincoln is required.

[3] Lincoln has also filed a motion for leave to file an otherwise unauthorized document. Attached thereto was a document styled as a supplement to the petition for reconsideration filed by Lincoln, and which provides certain additional traffic data which was not available at the time of the filing of the original petition of Lincoln. We have decided to grant Lincoln's motion for leave to file this additional document, since Lincoln has established good cause within the meaning of Rule 4(f) of the Board's rules.

[4] See footnote 5, below.

[5] Ozark Air Lines, Inc., has filed a motion for leave to file otherwise unauthorized documents. Attached thereto were two documents: (a) Reply of Ozark to objections, answers, and petitions for reconsideration filed herein by other parties; and (b) another copy of a previously filed reply to answers filed in response to Ozark's original application for an order to show cause. We have of course already considered the second document and rejected it as an unauthorized document in Order E-25971, and our decision remains unchanged since the carrier has not established good cause for its filing. With regard to the first document, we shall consider only that portion which is a reply to Lincoln's petition for reconsideration since that portion has been timely filed, and is an authorized document under our rules of practice; the rest of the document we shall not consider since Ozark has not established good cause for the acceptance of this portion which is not authorized under our rules of practice.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-2421; Filed, Feb. 27, 1968; 8:48 a.m.]

[Docket No. 19625; Order No. E-26395]

SHULMAN, INC.

Order of Investigation and Suspension Regarding Aggregate Weight Rule

Adopted by the Civil Aeronautics Board at it office in Washington, D.C., on the 23d day of February 1968.

By tariff revisions [1] filed on January 26, 1968, and marked to become effective February 28, 1968, Shulman, Inc. (Shulman), an air freight forwarder, proposes to make certain of its rates subject to the aggregate weight of the shipments received from the same consignor on the same day. The proposal is limited to rates on clothing and footwear and to movements originating in Los Angeles or San Francisco and terminating in Boston, Charlotte, Chicago, Newark, New York, and Philadelphia.

Upon consideration of all relevant matters, the Board finds that Shulman's proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, and unduly prejudicial, and otherwise unlawful, and should be suspended pending investigation.

The only justification presented by the forwarder is that the proposal is intended "to provide incentive loading by shippers." No claim is made that the proposal is justified by costs.

The proposed rule would make the rate on a shipment in one market depend upon shipments in other markets. For example, the shipper of 100 pounds of clothing from Los Angeles to Boston who also ships 900 pounds from Los Angeles to Chicago [2] would pay 22 percent less than another shipper of 100 pounds of that commodity in the Los Angeles-Boston market. The proposal obviously unjustly discriminates against a shipper in a particular market because he does not have traffic in another market.

Another objectionable feature of the proposal is that the charge is to be determined by the aggregate weight of all shipments received at one point from the same shipper on the same day. Although the proposed tariff indicates that no assembly service is to be provided for these shipments, it is obvious that the proposal provides for a service very similar to that under assembly service. But it is not subject to the rules governing this service, as provided in Shulman's Tariff, CAB No. 38, Rule 85, including the requirement that a specified charge be made.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

It is ordered, That:

1. An investigation be instituted to determine whether the provisions described in appendix A attached hereto,[3] and rules, regulations, and practices affecting such provisions, are or will be unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions, and rules, regulations, or practices affecting such provisions;

2. Pending hearing and decision by the Board, the provisions described in appendix A hereto [3] are suspended and their use deferred to and including May 27, 1968, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated;

4. Copies of the order shall be filed with the tariffs and served upon Shulman, Inc., which is hereby made a party to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 68-2422; Filed, Feb. 27, 1968; 8:48 a.m.]

[1] Revisions to Shulman, Inc.'s Tariff CAB Nos. 35 and 38.

[2] The proposed rate for a 100-pound shipment of clothing from Los Angeles to Boston is $16.75 per 100 pounds, which applies to shipments from 100 to 499 pounds. However, if shipments to Boston and Chicago are made on the same day, and they together amount to 1,000 pounds, the applicable rate is that for a 1,000-pound shipment, which is $13 per 100 pounds from Los Angeles to Boston.

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1075]

TRANS OCEAN VAN SERVICE

Order of Revocation

Whereas, on January 15, 1968, the General Insurance Company of America notified the Commission that the Independent Ocean Freight Forwarder Surety Bond No. 521278, underwritten in behalf of Trans Ocean Van Service, Post Office Box 7331, Long Beach, Calif. 90807, would be canceled effective February 15, 1968; and

Whereas, Trans Ocean Van Service was notified that unless a new surety bond was submitted to the Commission its Independent Ocean Freight Forwarder License No. 1075 would be revoked effective February 15, 1968, pursuant to General Order 4, Amendment 12 (46 CFR 510.9) and;

Whereas, Trans Ocean Van Service has failed to submit a valid surety bond in compliance with the above Commission rule:

It is ordered, That the Independent Ocean Freight Forwarder License No. 1075 of Trans Ocean Van Service be and is hereby revoked effective February 15, 1968.

It is further ordered, That the Independent Ocean Freight Forwarder License No. 1075 be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served on the licensee.

LEROY F. FULLER,
Acting Director,
Bureau of Domestic Regulation.

[F.R. Doc. 68-2437; Filed, Feb. 27, 1968; 8:49 a.m.]

[3] Appendix A filed as part of the original document.

FEDERAL POWER COMMISSION

[Docket No. RP68-15]

PANHANDLE EASTERN PIPE LINE CO.

Order Providing for Hearing, Suspending Proposed Revised Tariff Sheets and Providing Hearing Procedures

FEBRUARY 19, 1968.

Panhandle Eastern Pipe Line Co. (Panhandle) on January 4, 1968, tendered for filing proposed changes in its presently effective FPC Gas Tariff, Original Volume No. 1.[1] The proposed changes would increase all jurisdictional rates, resulting in an annual revenue increase of approximately $17.5 million, or 9.86 percent based upon estimated sales for the year ended October 31, 1968. The increased rates are proposed to become effective on February 3, 1968.

Panhandle states that the filing is designed to provide increased revenues from jurisdictional sales, utilizing the historical differentials between rate zones. In support of the proposed increased rates, Panhandle asserts that the principal reasons for the filing are (1) increased cost of labor, supplies and expenses; (2) increased cost of gas supply; (3) the need for a 7.25 percent rate of return; and (4) increased taxes both local and Federal as well as an estimated increase in the latter to include a possible 10 percent surtax which Panhandle states is subject to elimination and refund if such surtax does not materialize.

In response to a letter from the Commission Secretary on January 19, Panhandle, on January 25, completed its filing by submitting additional schedules

[1] Proposed revised Tariff Sheets: Second Revised Sheets Nos. 24-A, 24-B, 24-C; Third Revised Sheets Nos. 26-F, 26-G; Fourth Revised Sheet No. 26-E; Fifth Revised Sheets Nos. 26-A, 26-B; Ninth Revised Sheets Nos. 5, 6, 8, 9, 11, 12, 23, 24; Tenth Revised Sheets Nos. 4, 7, 10, 13, 14, 16, 17, 20, 22, 29, 31; Eleventh Revised Sheets Nos. 19, 27; Fourteenth Revised Sheet No. 25. Panhandle's existing rates become effective as of January 1, 1967, by order of the Commission issued July 5, 1967, in Docket No. RP67-18.

and working papers. The Secretary's letter had notified Panhandle that in view of its failure to allow the full 30 days statutory notice [2] and also, in view of the deficiencies in its tendered filing, no filing date would be assigned pending receipt of the additional material required by the regulations and the tendered revised tariff sheets could not be effective on February 3, 1968, as proposed by Panhandle.[3] On Staff's request, Panhandle on January 26, 1968, also submitted a production cost of service for Anadarko Production Co.

Panhandle's additional material was accompanied by a motion, filed January 26, requesting procedural relief in the alternative: (a) That the Commission waive the notice requirements of its regulations and treat the effective date, absent suspension of the filing, as February 3, 1968; (b) that the Commission treat the filing as supplemented by the motion filed on January 25, 1968, as proposing an effective date of February 4, 1968; or (c) that any suspension order be limited to a date not later than July 3, 1968.

Upon consideration of Panhandle's motion, we find that since the deficiency material was not supplied until January 25, we cannot treat its filing as having been made prior to the date on which Panhandle brought its filing into compliance with our Regulations. However, Panhandle did satisfy the deficiencies indicated in the aforementioned letters with reasonable promptness. Moreover, in the instant proceeding the notice that a filing date would be withheld pending correction of the deficiencies represents one of the first interpretations of the existing rate filing regulations in the context of a major rate increase application and while our action here serves notice that such applications will have to be acceptable for filing, this may previously have been unclear. Accordingly, we are of the view that the suspension of the proposed rates until July 4, 1968, as prescribed herein is appropriate. This, of course, does not mean that future delinquent filings will receive similar treatment.

A review of the filing indicates on its face that certain issues are raised which require development in an evidentiary proceeding. Included among those issues, but without limitation thereof, are: The need for a 7.25 percent rate of return; the cost to be included in Panhandle's cost of service for gas it purchases from its affiliate Anadarko Production Co.; the possible surcharge upon and the computation of the Federal Income Tax allowance; working capital and rate base adjustments; adjustments to depreciation allowances and depreciation reserves; adjustments to purchased gas costs and operating expenses; adjustments to sales and revenues; the allocation of costs to, or crediting of revenues from, liquid extraction operations of the company or its affiliates; the disposition of the amounts in Account 282; and the proposed utilization of an Mcf-miles allocation of costs between jurisdictional and nonjurisdictional sales in lieu of methods specifically prescribed for Panhandle in prior Commission opinions.

The increased rates and charges contained in Panhandle's FPC Gas Tariff as proposed herein have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

We contemplate that among the issues mentioned above and others, some may be susceptible of hearing and decision within the 5 months suspension period. In order that the collection and refunding of any possible excess charges may be avoided, we will provide procedure under which such issues may be tried in an initial phase of the hearings.[4]

Following publication of the Commission's notice of Panhandle's increased rate filing, 31 notices and petitions for intervention were filed. These include 23 customer-distributors and 29 cities (23 jointly in one petition with Illinois Municipal Utilities Association) spread throughout the six States served by Panhandle. The State regulatory commissions of Kansas, Michigan, and Missouri filed notices of intervention and the General Services Administration filed a petition to intervene.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Panhandle's FPC Gas Tariff, as proposed to be amended herein, and that the proposed tariff sheets listed above be suspended, and the use thereof be deferred as herein provided.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the disposition of this proceeding be expedited in accordance with the procedures set forth below.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held commencing on February 28, 1968, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426, concerning the lawfulness of the rates, charges, classifications, and services contained in Panhandle's FPC Gas Tariff, as proposed to be amended herein.

(B) Pending such hearing and decision thereon Panhandle's proposed revised tariff sheets listed above are hereby suspended and the use thereof is deferred until July 4, 1968, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) At the hearing on February 28, 1968, Panhandle's prepared testimony (Statement P) filed and served on January 19, 1968, together with its entire rate filing as submitted and served on January 4, and as supplemented on January 25, and 26, 1968, shall be admitted to the record as Panhandle's complete case-in-chief as provided in Commission regulations § 154.63(e)(1), and Order No. 254, 28 FPC 495, 496, subject to appropriate motions, if any, by parties to the proceeding.

(D) Following admission of Panhandle's complete case-in-chief, the parties shall present their views and the Presiding Examiner, in the exercise of his discretion, shall determine which issues, if any, shall be heard in the initial phase hearing; fix dates for service of Staff's and Interveners' evidence on such issues and service of Panhandle's rebuttal testimony; fix dates for witnesses to appear for adoption of their testimony and to stand cross-examination thereon; and proceed with such hearing as expeditiously as feasible. The Examiner shall thereafter fix dates for service of testimony and cross-examination on all issues not being heard in the first phase hearing.

(E) Chief Examiner Joseph Zwerdling, or any other designated by him for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding; shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 68-2493; Filed, Feb. 27, 1968; 8:49 a.m.]

[2] N.G.A. section 4(d) states: "Unless the Commission otherwise orders, no change shall be made * * * except after 30 days' notice * * *". Regulations § 154.22 states: "All tariffs, and contracts or any parts thereof shall be filed * * * not less than 30 days * * * prior to the proposed effective date * * *."

[3] Regulations § 154.63(c)(4), authorized the Secretary to reject filings where the material does not comply with the regulations. Cf. also, Order No. 254, 28 FPC 495 (1962), Order No. 255, 28 FPC 500, 790.

[4] Tennessee Gas Transmission Company v. F.P.C., 371 U.S. 145, 154-155 (1962).

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs., Temporary Reg. F-15]

SECRETARY OF DEFENSE

Delegation of Authority Regarding Communications Rate Matter

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the customer interest of the Federal Government in a communications rate matter.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d), authority is delegated to the Secretary of Defense to represent the interest of the executive agencies of the Federal Government before the Federal Communications Commission in such proceedings as may be necessary or appropriate in connection with the AT&T filing of increased TELPAK rates, scheduled to become effective April 1, 1968.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: February 20, 1968.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 68-2388; Filed, Feb. 27, 1968; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 81-81]

GROVE MANUFACTURING CO.

Notice of Application and Opportunity for Hearing

FEBRUARY 21, 1968.

Notice is hereby given that Grove Manufacturing Co. (Grove), Post Office Box 21, Shady Grove, Pa. 17256, has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (Act), for an order exempting the company from the registration requirements of section 12(g) of the Act.

Section 12(g) of the Act requires the registration of the equity securities of every issuer which is engaged in or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means of instrumentality of interstate commerce and, on the last day of its fiscal year, has total assets exceeding $1 million, and a class of equity security held of record initially by 750 or more persons, and after July 1, 1966, by 500 or more persons.

Section 12(h) empowers the Commission to exempt, in whole or in part, any issuer or class of issuers from the registration, periodic reporting and proxy solicitation provisions and to grant exemptions from the insider reporting and trading provisions of the Act if the Commission finds, by reason for the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, or otherwise, that such exemption is not inconsistent with the public interest or the protection of investors.

The company's application states, in part:

Grove Manufacturing Co., a Pennsylvania corporation, had at the close of its fiscal year on May 31, 1967, assets valued at more than $12,500,000. It had outstanding 890,257 shares of common stock which were traded in the over-the-counter market, and stockholders in excess of 500.

Accordingly under section 12(g)(1)(B) of the Securities Exchange Act of 1934, Grove would be required to file a registration statement with respect to Grove common stock by September 28, 1967, unless exempted from registration under section 12(h) of the Act and the regulations thereunder.

Grove entered into an agreement and plan of reorganization, dated as of August 25, 1967, whereby Grove would sell and transfer substantially all of its assets to a new, wholly owned subsidiary of Walter Kidde & Co., Inc. (Kidde). The agreement provided for the dissolution of Grove after the closing and the distribution of the Kidde shares received at the closing to the Grove shareholders in complete liquidation of Grove. The shareholders of Grove, at the annual meeting held September 29, 1967, voted approval of the agreement. Subsequently, as required by the agreement, a favorable tax ruling was received from the Internal Revenue Service and the Kidde shares to be issued in the transaction were approved for listing on the New York Stock Exchange.

On November 17, 1967, the closing was held pursuant to the agreement and substantially all of the assets of Grove were transferred to a wholly owned subsidiary of Kidde in accordance with the agreement. Accordingly, the outstanding shares of Grove common stock are being exchanged for Kidde preference and common shares in accordance with the terms of the agreement. As of February 9, 1968, 1,096,360 shares of Grove common stock have been presented for exchange. There is still outstanding an additional 8,637 shares of Grove common stock, these shares being held by 62 registered stockholders.

On January 8, 1968, Grove sent to the Office of the Secretary of State of the Commonwealth of Pennsylvania a certificate of election to dissolve.

Notice is further given that any interested person, may not later than March 11, 1968, submit to the Commission in writing his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued by the Commission unless an order for hearing upon said application be issued upon request or upon the Commission's own motion.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 68-2393; Filed, Feb. 27, 1968; 8:46 a.m.]

[812-2274]

HAYDEN, STONE, INC.

Notice of Filing of Application for Order of Exemption

FEBRUARY 21, 1968.

Notice is hereby given that Hayden, Stone, Inc. ("Applicant"), 25 Broad Street, New York, N.Y. 10004, a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") and the proposed managing underwriter for a proposed offering of shares of common stock of Competitive Capital Fund ("Competitive"), a diversified management company registered under the Investment Company Act of 1940 ("Act") has filed an application pursuant to section 6(c) of the Act for an order exempting it from the provisions of section 30(f) of the Act to the extent necessary to permit it to undertake and consummate transactions in connection with its underwriting of Competitive. Competitive will be a closed-end investment company until 30 days after its registration statement becomes effective and, thereafter, will be an open-end investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant proposes to enter into an underwriting agreement with Competitive for the sale to the underwriters of shares of common stock of Competitive. Competitive has registered these shares under the Securities Act of 1933. The shares will be purchased from Competitive at a price of $9.15 per share by the underwriters who will then sell the shares to the public at a maximum public offering price of $10 per share. Applicant may, for its own account, also sell some shares to selling dealers for resale to the public.

Applicant states that it does not contemplate that any of its directors, officers or employees will serve as an officer or director of Competitive or of any of its investment advisers, nor does it contemplate that it will furnish any services to Competitive which could result in Applicant being deemed an investment adviser to Competitive within the meaning of the Act. Applicant represents that it does not own any voting stock of Competitive's investment advisers.

Applicant, as managing underwriter, may purchase from Competitive more than 50 percent of the shares of Competitive to be issued and sold to all the underwriters. However, this will not be determined until after the effective date

of Competitive's registration statement and immediately prior to the closing for the purchase of the shares from Competitive by the underwriters.

Section 30(f) of the Act imposes the duties and liabilities of section 16 of the Exchange Act upon, among others, beneficial owners of more than 10 percent of any class of outstanding securities of a registered closed-end investment company. Section 16 of the Exchange Act contains reporting requirements, prohibitions against profits from purchases and sales or sales and purchases within 6 months and against short sales by persons covered thereby.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that the requested exemption from the provisions of section 30(f) of the Act is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, stating that the transactions sought to be exempted are not the type which section 16 was enacted to proscribe.

Notice is further given that any interested person may, not later than March 7, 1968, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 68–2394; Filed, Feb. 27, 1968; 8:46 a.m.]

[File Nos. 7–2862—7–2871]

HOLIDAY INNS OF AMERICA, INC., ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

FEBRUARY 20, 1968.

In the matter of applications of the Detroit Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Holiday Inns of America, Inc	7–2862
Howard Johnson Co	7–2863
Ling-Temco-Vought, Inc	7–2864
Motorola, Inc	7–2865
Occidental Petroleum Corp	7–2866
Otis Elevator Co	7–2867
Pacific Petroleums, Ltd	7–2868
Phillips Petroleum Co	7–2869
Rayonier, Inc	7–2870
S C M Corp	7–2871

Upon receipt of a request, on or before March 6, 1968, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 68–2395; Filed, Feb. 27, 1968; 8:46 a.m.]

WYOMING NUCLEAR CORP.

Order Suspending Trading

FEBRUARY 21, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Wyoming Nuclear Corp., North Hollywood, Calif., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period February 23, 1968, through March 3, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 68–2396; Filed, Feb. 27, 1968; 8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

CAPITAL MARKETING CORP.

Notice of Application for License as Small Business Investment Company

Notice is hereby given concerning the filing of an application wtih the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR Part 107; 33 F.R. 326) under the name of Capital Marketing Corp., 9001 Ambassador Row, Dallas, Tex. 75222, for a license to operate in the State of Texas as a small business investment company under the provisions of The Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.).

The proposed Agent for Correspondence, Officers and Directors are as follows:

Nathaniel Gibbs, 2001 Ambassador Row, Dallas, Tex. 75222. Agent for Correspondence, President, and Director.

Thomas Branson, 6522 Desco Drive, Dallas, Tex. 75225. Vice President, Director, and Stockholder.

James T. Clark, 11077 Strayhorn Drive, Dallas, Tex. 75228. Vice President, Director, and Stockholder.

H. D. Strasburger, 3108 West Avenue T, Temple, Tex. 76502. Secretary, Director, and Stockholder.

Carlo Angelo, 6863 Gaston Avenue, Dallas, Tex. 75214. Assistant Secretary, Treasurer, Director.

Milton Carter, 1209 North Mason, Bowie, Tex. 76230. Treasurer, Director, and Stockholder.

Harry Cook, 9001 Ambassador Row, Dallas, Tex. 75247. General Manager.

Matters involved in SBA's consideration of the application include the general business reputation and character of the management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and regulations.

The company proposes to commence operations with $800,000 through the sale of 160,000 shares of common stock at $5 per share. The shares will be offered to Affiliated Food Stores, Inc. (Affiliated), a Texas corporation, operating as a cooperative, and to the approximately 850 stockholders of Affiliated who are independent small businessmen engaged in the retail grocery business. Affiliated will purchase up to 10,000 shares but less than 10 percent. The shareholders of Affiliated will be offered a minimum of 200 shares and a maximum of 400 shares each.

The company proposes to primarily engage in making longterm loans to the small retail grocers who are stockholders of Affiliated for the purpose of remodeling, modernizing, and expanding their stores. The company will, however, entertain applications from any potential borrower. The stockholders of the small business investment company with the exception of Affiliated would be eligible to borrow from the company. Based on the above facts, no one borrower from the company will own as much as 1 percent of the outstanding stock of the company.

One of the matters to be considered by SBA is whether, in these special circumstances, the operations of the company would be in furtherance of the purposes of the Act, and whether an exemption from the provisions of § 107.-1004(b) (1) and (4) should be granted.

Notice is further given that any interested person may not later than March 8, 1968, at 5 p.m., submit to SBA in writing, relevant comments on the proposed company. Any communication should be addressed to: Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Dallas, Tex.

Dated: February 21, 1968.

For SBA (pursuant to delegated authority).

JAMES T. PHELAN,
Deputy Associate Administrator for Investment.

[F.R. Doc. 68-2397; Filed, Feb. 27, 1968; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 23, 1968.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41245—*Superphosphate from Florida points to Henry, Ill.* Filed by O. W. South, Jr., agent (No. A5083), for interested rail carriers. Rates on superphosphate, not defluorinated superphosphate, nor feed grade superphosphate, in bulk, minimum weight 100,000 pounds per car, subject to volume minimum of not less than 500,000 pounds per shipment, from specified Florida producing points, to Henry, Ill.

Grounds for relief—Rail-barge-truck competition.

Tariff—Supplement 31 to Southern Freight Association, agent, tariff ICC S-700.

By the Commission.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-2426; Filed, Feb. 27, 1968; 8:48 a.m.]

[Notice 487]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

FEBRUARY 23, 1968.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission, under the Commission's deviation rules revised, 1957 (49 CFR 211.1 (c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1 (d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's deviation rules revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 2401 (Deviation No. 15), MOTOR FREIGHT CORPORATION, 2345 South 13th Street, Post Office Box 2057, Idaho Station, Terre Haute, Ind. 47802, filed February 12, 1968. Carrier proposes to operate as a common carrier, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Nashville, Tenn., and Indianapolis, Ind., over Interstate Highway 65, for operating convenience only, using such ingress and egress to and from said highway as necessary. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Nashville, Tenn., over U.S. Highway 41 to junction U.S. Highway 431, north of Springfield, Tenn., thence over U.S. Highway 431 to Adairville, Ky., (2) from Adairville, Ky., over U.S. Highway 431 to Russellville, Ky., (3) from Russellville, Ky., over U.S. Highway 431 to Owensboro, Ky., (4) from Owensboro, Ky., over U.S. Highway 231 to junction Indiana Highway 66, thence over Indiana Highway 66 to Evansville, Ind., (5) from Evansville, Ind., over U.S. Highway 41 to Terre Haute, Ind., and (6) from Terre Haute, Ind., over U.S. Highway 40 to Indianapolis, Ind., and return over the same routes.

No. MC 2401 (Deviation No. 16), MOTOR FREIGHT CORPORATION, 2345 South 13th Street, Post Office Box 2057, Idaho Station, Terre Haute, Ind. 47802. filed February 12, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Indianapolis, Ind., and Chicago, Ill., over Interstate Highway 65, for operating convenience only, using such ingress and egress to and from said highway as necessary. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Indianapolis, Ind., over U.S. Highway 52 to Montmorenci, Ind., thence over U.S. Highway 231 to junction Indiana Highway 53, thence over Indiana Highway 53 to junction U.S. Highway 30, thence over U.S. Highway 30 to Chicago Heights, Ill., thence north over unnumbered highway to junction U.S. Highway 54, thence over U.S. Highway 54 to Chicago, Ill.

No. MC 2401 (Deviation No. 17), MOTOR FREIGHT CORPORATION, 2345 South 13th Street, Post Office Box 2057, Idaho Station, Terre Haute, Ind. 47802, filed February 12, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Indianapolis, Ind., over Interstate Highway 74 to junction Interstate Highway 80 at a point approximately 9 miles east of Moline, Ill., thence over Interstate Highway 80 to Omaha, Nebr., and return over the same route, for operating convenience only, using such ingress and egress to and from said highways as necessary. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Indianapolis, Ind., over U.S. Highway 52 to Montmorenci, Ind., thence over U.S. Highway 231 to junction Indiana Highway 53, thence over Indiana Highway 53 to junction U.S. Highway 30, thence over U.S. Highway 30 to Chicago Heights, Ill., thence north over unnumbered highway to junction U.S. Highway 54, thence over U.S. Highway 54 to Chicago, Ill., and (2) from Chicago, Ill., over Alternate U.S. Highway 30 to junction unnumbered highway at a point approximately 2½ miles southeast of Emerson, Ill., thence over unnumbered highway via Emerson, Ill., to junction U.S. Highway 30 at a point approximately 3 miles

southwest of Emerson, thence over U.S. Highway 30 to junction Iowa Highway 131, thence over Iowa Highway 131 to junction Iowa Highway 212, thence over Iowa Highway 212 to junction U.S. Highway 30, thence over U.S. Highway 30 to Missouri Valley, Iowa, thence over Alternate U.S. Highway 30 to Council Bluffs, Iowa, thence over city streets to Omaha, Nebr., and return over the same routes.

No. MC 2401 (Deviation No. 18), MOTOR FREIGHT CORPORATION, 2345 South 13th Street, Post Office Box 2057, Idaho Station, Terre Haute, Ind. 47802, filed February 12, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Vincennes, Ind., over U.S. Highway 50 to junction Interstate Highway 65 approximately 3 miles east of Seymour, Ind., thence over Interstate Highway 65 to Indianapolis, Ind., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Vincennes, Ind., over U.S. Highway 41 to Terre Haute, Ind., and (2) from Terre Haute, Ind., over U.S. Highway 40 to Indianapolis, Ind., and return over the same routes.

No. MC 4963 (Deviation No. 23), JONES MOTOR CO., INC., Bridge Street and Schuylkill Road, Spring City, Pa. 19475, filed February 12, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Harrisburg, Pa., and Bristol, Va., over Interstate Highway 81, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Roanoke, Va., over U.S. Highway 11 to Harrisburg, Pa., and (2) from Roanoke, Va., over U.S. Highway 11 to Bristol, Va., and return over the same routes.

No. MC 29120 (Deviation No. 8), ALL-AMERICAN TRANSPORT, INC., 1500 Industrial Avenue, Sioux Falls, S. Dak. 57101, filed February 14, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Indianapolis, Ind., over Interstate Highway 74 to junction U.S. Highway 150 near Champaign, Ill., thence over U.S. Highway 150 to junction U.S. Highway 61 at Davenport, Iowa, thence over U.S. Highway 61 to De Witt, Iowa, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Chicago, Ill., over U.S. Highway 41 to Kentland, Ind., thence over U.S. Highway 52 via Indianapolis, Ind., to Cincinnati, Ohio, (2) from Chicago, Ill., over U.S. Highway 41 to Kentland, Ind., thence over U.S. Highway 52 to Indianapolis, Ind., thence over U.S. Highway 31 to junction Alternate U.S. Highway 31, thence over Alternate U.S. Highway 31 via Seymour, Ind., to junction U.S. Highway 31, thence over U.S. Highway 31 to Sellersburg, Ind., thence over U.S. Highway 31E to Louisville, Ky., and (3) from Chicago, Ill., over Alternate U.S. Highway 30 to junction U.S. Highway 30, thence over U.S. Highway 30 to junction unnumbered highway southeast of Marshalltown, Iowa, thence over unnumbered highway to Marshalltown, Iowa, thence over Iowa Highway 330 to junction U.S. Highway 30, thence over U.S. Highway 30 to Denson, Iowa, thence over U.S. Highway 59 to junction Iowa Highway 141, thence over Iowa Highway 141 to Sioux City, Iowa, and return over the same routes.

No. MC 59680 (Deviation No. 57), STRICKLAND TRANSPORTATION CO., INC., Post Office Box 5689, Dallas, Tex. 75222, filed February 14, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Cleveland, Ohio, over Interstate Highway 80 to junction Interstate Highway 81, near Drums, Pa., thence over Interstate Highway 81 to junction Interstate Highway 84, near Scranton, Pa., thence over Interstate Highway 84 to Hartford, Conn., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Cleveland, Ohio, over U.S. Highway 21 to the Ohio Turnpike, thence over the Ohio Turnpike to junction with the Pennsylvania Turnpike, thence over the Pennsylvania Turnpike to junction with the New Jersey Turnpike, thence over the New Jersey Turnpike to Newark, N.J., thence over U.S. Highway 1 via Bridgeport, Conn., to New Haven, Conn., thence over Connecticut Highway 17 to Middletown, Conn., thence over Connecticut Highway 9 to Hartford, Conn., and return over the same route.

No. MC 111594 (Deviation No. 11), C. W. TRANSPORT, INC., High Street, Wisconsin Rapids, Wis. 54494, filed February 15, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Oshkosh, Wis., over Wisconsin Highway 110 to junction U.S. Highway 10, thence over U.S. Highway 10 to Stevens Point, Wis., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Marshfield, Wis., over Wisconsin Highway 13 to junction U.S. Highway 10, thence over U.S. Highway 10 to Stevens Point, Wis., thence over U.S. Highway 51 to Plainfield, Wis., thence over Wisconsin Highway 73 to Wautoma, Wis., thence over Wisconsin Highway 21 to Oshkosh, Wis., thence over Wisconsin Highway 175 to Fond du Lac, Wis. (also from Oshkosh, Wis., over U.S. Highway 45 to Fond du Lac, Wis.), thence over U.S. Highway 45 to Milwaukee, Wis., thence over U.S. Highway 41 to Chicago, Ill., and return over the same route.

MOTOR CARRIERS OF PASSENGERS

No. MC 94818 (Deviation No. 1), BROOKS BUS LINES, INC., 220 South Fifth Street, Paducah, Ky. 42001, filed February 12, 1968. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 40 and Interstate Highway 70 just east of the Illinois-Indiana State line, over Interstate Highway 70 to junction Interstate Highway 465 just southwest of Indianapolis, Ind., thence over Interstate Highway 465 to junction Indiana Highway 37, thence over Indiana Highway 37 to junction Interstate Highway 69, thence over Interstate Highway 69 to junction Michigan Highway 60 just north of Tekonsha, Mich., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From junction U.S. Highway 40 and Interstate Highway 70 just east of the Illinois-Indiana State line, over U.S. Highway 40 to Indianapolis, Ind., thence over U.S. Highway 36 to junction Indiana Highway 9, thence over Indiana Highway 9 to Huntington, Ind., thence over U.S. Highway 24 to Fort Wayne, Ind., thence over U.S. Highway 27 to junction Michigan Highway 60, near Tekonsha, Mich., and return over the same route.

No. MC 107109 (Deviation No. 9), INDIANAPOLIS AND SOUTHEASTERN TRAILWAYS, INC., 1318 North Capitol Avenue, Indianapolis, Ind. 46202, filed February 16, 1968. Carrier's representative: James E. Wilson, 1735 K Street NW., Washington, D.C. 20006. Carrier proposes to operate as a *common carrier*, by motor vehicle of *passengers and their baggage*, over a deviation route as follows: From junction U.S. Highway 25W and Interstate Highway 75, approximately 2 miles south of Corbin, Ky., over Interstate Highway 75 to junction U.S. Highway 25W approximately 2 miles south of Williamsburg, Ky., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: Between Corbin, Ky., and Jellico, Tenn., over U.S. Highway 25W.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68-2427; Filed, Feb. 27, 1968; 8:48 a.m.]

[Notice 1153]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

FEBRUARY 23, 1968.

The following publications are governed by Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20,

1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 7523 (Sub-No. 13) (Republication), filed August 15, 1967, published in the FEDERAL REGISTER issues of August 31, 1967, and September 21, 1967, and republished this issue. Applicant: VENTURA TRANSFER COMPANY, a corporation, 3440 East South Street, Long Beach, Calif. Applicant's representative: Phil Jacobson, 510 West Sixth Street, Los Angeles, Calif. 90014. By application filed August 15, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation in interstate or foreign commerce as a common carrier, by motor vehicle, over irregular routes, of chemicals dry and plastics, in bulk, in motor vehicles (1) from rail cars, rail sidings, and ports of entry in California to points in California, and (2) from points in California to ports of entry in California, including points on the international boundary line between the United States and Mexico. A report and order of the Commission, Operating Rights Board, served February 16, 1967, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *plastics and dry chemicals*, in bulk, between points in California; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 103993 (Sub-No. 300) (Republication), filed September 15, 1967, published FEDERAL REGISTER issue of October 5, 1967, and republished this issue. Applicant: MORGAN DRIVE AWAY, INC., 2800 West Lexington Avenue, Elkhart, Ind. 46514. Applicant's representative: Robert G. Tessar (same address as applicant). By application filed September 15, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation in interstate or foreign commerce, as a common carrier by motor vehicle over irregular routes, of special purpose trailers, designed to be drawn by passenger automobiles, travel trailers, and pickup campers, in initial movements, from points in Natrona County, Wyo., to points in the United States on and west of the Mississippi River, including all of Louisiana and Minnesota (but excluding Alaska and Hawaii). An order of the Commission, Operating Rights Board dated January 19, 1968, and served February 15, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *trailers*, designed to be drawn by passenger automobiles and *pickup campers*, in initial movements, from points in Natrona County, Wyo., to points in the United States in and west of Minnesota, Iowa, Missouri, Arkansas, and Louisiana, except Alaska and Hawaii; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 111729 (Sub-No. 247) (Republication), filed August 7, 1967, published FEDERAL REGISTER issue of September 8, 1967, and republished this issue. Applicant: AMERICAN COURIER CORPORATION, 222–17 Northern Boulevard, Bayside, N.Y. 11361. Applicant's representative: Russell S. Bernhard, 1625 K Street, NW., Commonwealth Building, Washington, D.C. 20006. By application filed August 7, 1967, as amended, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicles, over irregular routes transporting: (1) Business papers, records, and audit and accounting media of all kinds (excluding plant removals), and sales and advertising papers moving therewith, (a) between Fairmount, W. Va., on the one hand, and, on the other, Greensburg, Pa.; (b) between Braintree, Mass., on the one hand, and, on the other, Union, N.J.; (c) between Westboro, Mass., on the one hand, and, on the other, Arctic, East Greenwich, Warren, Wickford, Westerly, and Wakefield, R.I.; (d) between O'Hare Field, Chicago, Ill., on the one hand, and, on the other, River Grove, Ill., and Cleveland, Ohio, on shipments having prior or subsequent movement by air; (e) between Middlesex County, Mass., on the one hand, and, on the other, points in New Hampshire (except Hillsboro and Rockingham Counties, N.H.); points in Connecticut (except Fairfield County, New Haven, Litchfield, and Middlesex Counties, Conn.); points in Maine (except Knox, Penobscot, Kennebec, Androscoggin, and Cumberland Counties, Maine); points in Rhode Island (except Providence County, R.I.); points in New York; and points in New Jersey; (f) between Tonawanda, N.Y., on the one hand, and, on the other, Cleveland and Fostoria, Ohio; Buffalo, N.Y., and Clarksburg, W. Va.; (g) between Richmond, Va., and Orangeburg, S.C.

(2) Payroll checks, (a) from Tonawanda, N.Y., to Cleveland and Fostoria, Ohio; (b) between Tonawanda, N.Y., on the one hand, and, on the other, Buffalo, N.Y., and Clarksburg, W. Va.; (c) between Richmond, Va., and Orangeburg, S.C.; (3) radiopharmaceuticals, radiochemicals, certified radiation standards, and radiation sources, between Cambridge, Mass., on the one hand, and, on the other, points in Maine, New Hampshire, Rhode Island, and Connecticut. An order of the Commission, Operating Rights Board, dated January 29, 1968, and served February 15, 1968, as amended, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting (1) *business papers, records, and audit and accounting media* (except cash letters), and sales and *advertising papers* moving therewith, (a) between Fairmont, W. Va., on the one hand, and, on the other, Greensburg, Pa.; (b) between Braintree, Mass., on the one hand, and, on the other, Union, N.J.; (c) between Westboro, Mass., on the one hand, and, on the other, Arctic, East Greenwich, Warren, Wickford, Westerly, and Wakefiled, R.I.; (d) between O'Hare Field, Chicago, Ill., on the one hand, and, on the other, River Grove, Ill., and Cleveland, Ohio, on shipments having prior or subsequent movement by air; (e) between Middlesex County, Mass., on the one hand, and, on the other, points in New Hampshire (except Hillsboro and Rockingham Counties, N.H.); points in Connecticut (except New Haven, Litchfield, and Middlesex Counties, Conn.); points in Maine (except Knox, Penobscot, Kennebec, Androscoggin, and Cumberland Counties, Maine); points in Rhode Island (except Providence County, R.I.); points in New York; and points in New Jersey.

(f) Between Tonawanda, N.Y., on the one hand, and, on the other, Cleveland and Fostoria, Ohio; Buffalo, N.Y., and Clarksburg, W. Va.; (g) between Richmond, Va., and Orangeburg, S.C.; (2) *payroll checks*, (a) from Tonawanda, N.Y., to Cleveland and Fostoria, Ohio; (b) between Tonawanda, N.Y., on the one hand, and, on the other, Buffalo, N.Y., and Clarksburg, W. Va.; (c) between Richmond, Va., and Orangeburg, S.C.; (3) *radiopharmaceuticals, radiochemicals, certified radiation standards,*

and radiation sources, between Cambridge, Mass., on the one hand, and, on the other, points in Maine, New Hampshire, Rhode Island, and Connecticut, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 111729 (Sub-No. 525) (Republication), filed October 6, 1967, published in FEDERAL REGISTER issue of November 2, 1967, and republished this issue. Applicant: AMERICAN COURIER CORPORATION, 222–17 Northern Boulevard, Bayside, N.Y. 11361. Applicant's representative: Russell S. Bernhard, 1625 K Street NW., Commonwealth Building, Washington, D.C. 20006. By application filed October 6, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier, by motor vehicle, over irregular routes, of (1) business papers, records, and audit and accounting media of all kinds (excluding plant removals), and advertising material and merchandise samples moving therewith, between Milwaukee, Wis., on the one hand, and, on the other, Elmhurst, Ill.; (2) business papers, records, and audit and accounting media of all kinds (excluding plant removals), (a) between Muncie, Ind., on the one hand, and, on the other, Detroit, Mich.; (b) between Minneapolis, Minn., on the one hand, and, on the other, West Chicago, Ill.; (c) between Portland, Maine, on the one hand, and, on the other, Manchester, N.H., and Boston, Mass.; (3) tax stamp meter machines, between Boston, Mass., on the one hand, and, on the other, Hartford, Conn., and North Haven, Conn.

(4) Exposed and processed film and prints, complimentary replacement film, incidental dealer handling supplies and advertising literature moving therewith (excluding motion picture film used primarily for commercial theater and television exhibition), between Cleveland Ohio, on the one hand, and, on the other, points in Indiana. An order of the Commission Operating Rights Board, dated January 29, 1968, and served February 15, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier, by motor vehicle, over irregular routes, of (1) business papers, records, and audit and accounting media (except cash letters), and advertising material and merchandise samples moving therewith, between Milwaukee, Wis., on the one hand, and, on the other, Elmhurst, Ill.; (2) business papers, records, and audit and accounting media (except cash letters), (a) between Muncie, Ind., on the one hand, and, on the other, Detroit, Mich.; (b) between Minneapolis, Minn., on the one hand, and, on the other, West Chicago, Ill.; (c) between Portland, Maine, on the one hand, and, on the other, Manchester, N.H., and Boston, Mass.; (3) tax stamp meter machines, between Boston, Mass., on the one hand, and, on the other, Hartford, Conn., and North Haven, Conn.; (4) exposed and processed film and prints, complimentary replacement film, incidental dealer handling supplies and advertising literature moving therewith (excluding motion picture film used primarily for commercial theater and television exhibition), between Cleveland, Ohio, on the one hand, and, on the other, points in Indiana; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 111740 (Sub-No. 22) (Republication), filed October 13, 1967, published FEDERAL REGISTER issue of November 2, 1967, and republished this issue. Applicant: OIL TRANSPORT COMPANY, a corporation, East Highway 80, Post Office Drawer 2679, Abilene, Tex. 79604. Applicant's representative: Jerry Prestridge, Post Office Box 1148, Austin, Tex. 78767. By application filed October 13, 1967, applicant seeks a certificate of public convenience and necessity authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicles, over irregular routes transporting sulphur, except that sulphur derived from petroleum or petroleum products, in bulk, from points in Culberson, Pecos, and Reeves Counties, Tex., to points in Arizona, New Mexico, and Texas. An order of the Commission, Operating Rights Board, dated January 29, 1968, and served February 16, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, transporting *sulphur,* in bulk, from points in Culberson, Pecos, and Reeves Counties, Tex., to points in Arizona, New Mexico, and Texas; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 115826 (Sub-No. 113) (Republication), filed November 8, 1965, published FEDERAL REGISTER issue of November 26, 1965, and republished this issue. Applicant: W. J. DIGBY, INC., 1960 31st Street, Post Office Box 5088 Terminal Annex, Denver, Colo. Applicant's representative: John H. Joyce, 26 North College, Fayetteville, Ark. In the above-entitled proceeding, the examiner recommended the granting to applicant a certificate of public convenience and necessity, authorizing operation in interstate or foreign commerce as a common carrier by motor vehicle, over irregular routes of, the commodities, to, and from points substantially as indicated below. A decision and order of the Commission, Review Board Number 2, dated February 8, 1968, and served February 14, 1968, as modified, finds that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, of interstate or foreign commerce, over irregular routes, in vehicles equipped with mechanical refrigeration, of (1) (a) *frozen foods, fresh and cured meats,* and (b) *commodities,* the transportation of which is partially exempt pursuant to the provisions of section 203(b)(6) of the Interstate Commerce Act, when moving in the same vehicle and at the same time with the commodities described in (a) above, from points in California, to points in Oregon, Washington, and Idaho, (2) *canned goods* (except meats, cream, and cream substitutes), from points in California, to points in Oregon and Washington, (3) *canned meats,* from points in California, to points in Idaho, (4) (a) *meats, and meat products,* and (b) *commodities,* the transportation of which is partially exempt pursuant to the provisions of section 203(b)(6) of the Interstate Commerce Act, when moving in the same vehicle and at the same time with the commodities described in (4)(a) above, from points in Arizona, to points in Oregon, Washington, and Idaho, and (5) *cream and cream substitutes,* in containers, from Gustine, Calif., to points in Oregon and Washington; that applicant is fit, willing, and able properly to perform such service and to

conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 117509 (Sub-No. 22) (republication), filed July 12, 1965, published FEDERAL REGISTER issue of August 11, 1965, and republished this issue. Applicant: SCHILLI TRANSPORTATION, INC., 8944 Granbury Circle, St. Louis, Mo. Applicant's representative: Thomas F. Kilroy, 1815 H Street NW., Washington, D.C. 20006. By application filed July 12, 1965, applicant seeks a permit authorizing operation, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of nitrocarbonitrate, (1) from the plantsite of Monsanto Co., near Midland, Ind., to the plantsite of Monsanto Co. near Central City, Ky., and (2) from the plantsite of Monsanto Co. near Pyatts, Ill., to points in Indiana, Kentucky, and Missouri, under a continuing contract with Monsanto Co.; and empty containers on return. An order of the Commission, operating rights board dated January 19, 1968, and served February 16, 1968, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of *nitrocarbonitrate*, (1) from the plantsite of Monsanto Co., near Midland, Ind., to the plantsite of Monsanto Co., near Central City, Ky., and (2) from the plantsite of Monsanto Co., near Pyatts, Ill., to points in Indiana, Kentucky, and Missouri; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder and that an appropriate certificate (subject to prior publication in the FEDERAL REGISTER of a notice of the authority actually granted by this order and subject to the condition that it shall be limited in point of time to a period expiring 5 years from the effective date hereof) be issued concurrently with or subsequent to the issuance to applicant of appropriate certificates in Nos. MC–129162 and MC–129162 (Sub-No. 2) and the cancellation of applicant's outstanding permits in No. MC–117509, and subs thereunder, and, that should the conversion proceedings in Nos. MC–129162 and MC–129162 (Sub-No. 2) be disapproved by the Commission, the instant application will stand denied in its entirety. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 118196 (Sub-No. 44) (republication), filed November 8, 1965, published FEDERAL REGISTER issue of November 26, 1965, and December 6, 1967, and republished this issue. Applicant: RAY & COMPANY TRANSPORTS, INC., Highway 71 North, Post Office Box 613, Carthage, Mo. 64836. Applicant's representative: Harry Ross, Warner Building, Washington, D.C. In the above-entitled proceeding, the examiner recommended the granting to applicant a certificate of public convenience and necessity, authorizing operation in interstate or foreign commerce as a common carrier by motor vehicle, over irregular routes of, the commodities, to, and from points substantially as indicated below. A decision and order of the Commission, Review Board Number 2, dated February 8, 1968, and served February 14, 1968, as modified, find that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, over irregular routes, in vehicles equipped with mechanical refrigeration, of (1) (a) *Frozen foods, fresh and cured meats*, and (b) *commodities*, the transportation of which is partially exempt pursuant to the provisions of section 203(b)(6) of the Interstate Commerce Act, when moving in the same vehicle and at the same time with the commodities described in (a) above, from points in California, to points in Oregon, Washington, and Idaho, (2) *canned goods* (except meats, cream, and cream substitutes), from points in California, to points in Oregon and Washington, (3) *canned meats*, from points in California, to points in Idaho.

(4) (a) *Meats, and meat products* and (b) *commodities*, the transportation of which is partially exempt pursuant to the provisions of section 203(b)(6) of the Interstate Commerce Act, when moving in the same vehicle and at the same time with the commodities described in (4)(a) above, from points in Arizona, to points in Oregon, Washington, and Idaho, and (5) *cream and cream substitutes*, in containers, from Gustine, Calif., to points in Oregon and Washington; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 123963 (Sub-No. 7) (Republication), filed June 22, 1967, published in the FEDERAL REGISTER issue of July 13, 1967, and republished this issue. Applicant: ATLAS TRANSFER & STORAGE CORP., 139 Europe Street, Baton Rouge, La. 70802. Applicant's representative: Ernest J. Landry, Sr. (same address as applicant). By application filed June 22, 1967, applicant seeks a permit authorizing operations, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of meats, meat products, and meat byproducts and articles distributed by meat packinghouses, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, limited to shipments having an immediate prior interstate movement by rail pool cars or pool trucks, from Baton Rouge, La., to points in the Louisiana parishes of Evangeline, St. Landry, Acadia, Lafayette, Iberia, Vermilion, Jefferson Davis, and Calcasieu, under a continuing contract with John Morrell & Co. A report and order of the Commission, Operating Rights Board, served February 15, 1968, finds that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of meats, meat products, and meat byproducts and articles distributed by meat packinghouses, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Baton Rouge, La., to points in the parishes of Evangeline, St. Landry, Acadia, Lafayette, Iberia, Vermilion, Jefferson Davis, and Calcasieu, La., under a continuing contract with John Morrell & Co., of Sioux Falls, S. Dak., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period

of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 129180 (Sub-No. 1) (Republication), filed June 19, 1967, published FEDERAL REGISTER issue of July 7, 1967, and republished this issue. Applicant: ROBERT D. CAPISTRANT, doing business as CAPPIE'S TRUCKING CO., 1637 Etna, St. Paul, Minn. 55106. Applicant's representative: A. R. Fowler, 2288 University Avenue, Saint Paul, Minn. 55114. By application filed June 19, 1967, applicant seeks a permit authorizing operations, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of aggregates such as sand, gravel, and crushed rock and also sacked lime and cement and other building materials, from Lakeland, Minn., to points in Polk, Pierce, and St. Croix Counties, Wis. An order of the Commission, Operating Rights Board, dated January 29, 1968, and served February 15, 1968, finds that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of construction materials, from Lakeland, Minn., to points in Polk, Pierce, and St. Croix Counties, Wis., under a continuing contract with Cemstone Products Co., of St. Paul, Minn., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 129211 (Sub-No. 2) (Republication), filed September 12, 1967, published FEDERAL REGISTER issue of September 28, 1967, and republished this issue. Applicant: MARIANN BURN AND CHARLES W. BURN, a partnership, doing business as M.C.B. COMPANY, Vanderburg and Railroad Avenue, Marlboro, N.J. Applicant's representative: Edward F. Bowes, 1060 Broad Street, Newark, N.J. 07102. By application filed September 12, 1967, applicant seeks a permit authorizing operations, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of dinnerware, tableware, and reproduced paintings used as merchandise premiums, and between the points indicated below. An order of the Commission, Operating Rights Board, dated January 19, 1968, and served February 15, 1968, finds that operation by applicant, in interstate or foreign commerce as a contract carrier by motor vehicle, over irregular routes, of *dinnerware, tableware, and reproduced paintings*, between Marlboro, N.J., on the one hand, and, on the other, New York, N.Y., and Philadelphia, Pa., under a continuing contract with George E. Weigl Co., of New York, N.Y., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication during which period any proper party in interest may file an appropriate petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240.)

MOTOR CARRIERS OF PROPERTY

No. MC–F–10048. Authority sought for purchase by MAURICE TRANSPORT CO., Post Office Box 409, Morton, Ill. 61550, of the operating rights and property of RKO TRANSPORT SERVICE, INC., Post Office Box 409, Morton, Ill. 61550. Applicants' representative: George S. Mullins, 4704 West Irving Park Road, Chicago, Ill. 60641. Operating rights sought to be transferred: *Petroleum products*, as described in appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles, as a *contract carrier*, over irregular routes, from the site of the Clark Oil & Refining Corp., at Tuscarora, Ill., to Davenport and Keokuk, Iowa. Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract, or contracts, with Clark Oil & Refining Corp., Tuscarora, Ill. Vendee is authorized to operate as a *contract carrier* in Indiana, Illinois, Iowa, Missouri, Ohio, and Wisconsin. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–10049. Authority sought for purchase by RED STAR EXPRESS LINES OF AUBURN, INCORPORATED, doing business as RED STAR EXPRESS LINES, 24–50 Wright Avenue, Auburn, N.Y. 13021, of the operating rights of PITTSBURGH-BUFFALO EXPRESS, INC., 1822 Ironton Street, Pittsburgh, Pa. 15203, and for acquisition by JOHN BISGROVE, 264 East Genesee Street, Auburn, N.Y., of control of such rights through the purchase. Applicants' attorney: Leonard A. Jaskiewicz, 1155 15th Street NW., Washington, D.C. 20005. Operating rights sought to be transferred: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier*, over regular routes, between McKeesport, Pa., and Buffalo, N.Y., serving certain intermediate and off-route points, with restriction; and *household goods*, over irregular routes, between points in that part of Pennsylvania on and west of U.S. Highway 219, on the one hand, and, on the other, points in New York. Vendee is authorized to operate as a *common carrier* in New York, Pennsylvania, Connecticut, New Jersey, Vermont, Massachusetts, and Rhode Island. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68–2428; Filed, Feb. 27, 1968; 8:48 a.m.]

[Notice 1155]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

FEBRUARY 23, 1968.

The following publications are governed by Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER issue of April 20, 1966, which became effective May 20, 1966.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

The applications immediately following are assigned for hearing at the time and place designated in the notice of filing as here published in each proceeding. All of the proceedings are subject to the special rules of procedure for hearing outlined below:

Special rules of procedure for hearing. (1) All of the testimony to be adduced by applicant's company witnesses shall be in the form of written statements which shall be submitted at the hearing at the time and place indicated.

(2) All of the written statements by applicant's company witnesses shall be offered in evidence at the hearing in the same manner as any other type of evidence. The witnesses submitting the written statements shall be made available at the hearing for cross-examination, if such becomes necessary.

(3) The written statements by applicant's company witnesses, if received in evidence, will be accepted as exhibits. To the extent the written statements refer to attached documents such as copies of operating authority, etc., they should be referred to in written statement as numbered appendices thereto.

(4) The admissibility of the evidence contained in the written statements and the appendices thereto, will be at the time of offer, subject to the same rules as if the evidence were produced in the usual manner.

(5) Supplemental testimony by a witness to correct errors or to supply inadvertent omissions in his written statement is permissible.

No. MC 117686 (Sub-No. 84), filed January 22, 1968, published in FEDERAL REGISTER of February 8, 1968, and republished this issue. Applicant: HIRSCHBACH MOTOR LINES, INC., 3324 U.S. Highway 75 North, Post Office Box 417, Sioux City, Iowa 51102. Applicant's representative: Duane W. Acklie, 1201 J Street, Post Office Box 806, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and articles distributed by meat packinghouses* (except hides and commodities in bulk), from the plantsite of Missouri Beef Packers located at or near Friona, Tex., to points in North Dakota, South Dakota, Minnesota, Wisconsin, Nebraska, Illinois, Iowa, Louisiana, Arkansas, Oklahoma, Missouri, and Kansas, restricted to traffic originating and destined to the points named. NOTE: This republication is to reflect the hearing information.

HEARING: March 27, 1968, in Room 7A38, Federal Building, 819 Taylor Street, Fort Worth, Tex., before Examiner Gerald F. Colfer.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68-2429; Filed, Feb. 27, 1968; 8:48 a.m.]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

FEBRUARY 23, 1968.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. 2184, filed February 7, 1968. Applicant: CHARLES HERDER, JR., doing business as HERDER TRUCK LINES, Joined by HERDER TRUCK LINES, INC., Lessee, Weimar, Tex. 78962. Applicant's representative: Ewell H. Muse, Jr., 415 Perry Brooks Building, Austin, Tex. 78701. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities,* (1) between Hallettsville and Altair over U.S. Highway 90A serving no intermediate points, (2) between Altair and Eagle Lake over Highway 90A serving no intermediate points, (3) between Eagle Lake and Garwood, from Eagle Lake over Farm-to-Market Road 102 to junction with Farm-to-Market Road 950, thence over Farm-to-Market Road 950 to Garwood, and return over the same routes, (4) between Eagle Lake and junction of County Road 285 and Farm-to-Market Road 102, from Eagle Lake over U.S. Highway 90A to junction with County Road 203, thence over County Road 215, thence over County Road 285 to the junction point, serving all intermediate points and as off-route points the plantsites of Texas Construction & Material Co., Horton & Horton, and Parker Bros. and Co., (5) from junction of Farm-to-Market Road 102 and County Road 285 to the Gifford Hill plantsite and return over the same route, (6) from junction of Farm-to-Market Road 102 and Farm-to-Market Road 950 over Farm-to-Market Road 102 to plantsite of Gifford Hill Co., (7) from junction of U.S. Highway 90A and County Road 161 in an easterly direction to the plantsites of Tenneco Oil Co. Gasoline Plant and Mobil Oil Co. Production Plant and return over the same route, (8) from junction of U.S. Highway 90A and Farm-to-Market Road 1164 in a westerly direction to the Tennessee Gas Pipe Line & Compressor Station, and return over the same route, coordinating the service proposed with service now authorized under other certificates owned by Charles Herder, Jr., doing business as Herder Truck Lines, and under lease to Herder Truck Lines, Inc., in both interstate and intrastate commerce.

Hearing: Not yet assigned. Requests for procedural information including the time for filing protests, concerning this application should be addressed to the Railroad Commission of Texas, Austin, Tex. 78711, and should not be directed to the Interstate Commerce Commission.

State Docket No. 3220, filed February 9, 1968. Applicant: SOUTHWESTERN MOTOR TRANSPORT, INC., Post Office Box 9186, San Antonio, Tex. 78204. Applicant's representative: Ewell H. Muse, Jr., 415 Perry Brooks Building, Austin, Tex. 78701. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities,* (1) between Raymondville, Tex., and Harlingen, Tex., over U.S. Highway 77, serving all intermediate points; (2) between McAllen, Tex., and Hidalgo, Tex., over the following routes: (a) The junction of Farm Road 1926 and U.S. Highway 83 over Farm Road 1926 south for 6.8 miles to the intersection of Farm Road 1926 and U.S. Highway 281 spur; thence southwesterly approximately 0.2 of a mile over U.S. Highway 281 spur to Hidalgo; thence over U.S. Highway 281 spur 0.1 of a mile to the International Bridge and return, serving all intermediate points on such route and all points, places, businesses, stores, and warehouses between Hidalgo and the bridge, (b) the junction of U.S. Highway 83 and State Highway 336 over State Highway 336 south 6.9 miles to the intersection of State Highway 336 and U.S. Highway 281 spur, thence southwesterly on U.S. Highway 281 spur, 0.1 of a mile to the International Bridge, and return, serving all intermediate points on such route and all points, places, businesses, stores and warehouses between Hidalgo and the bridge. Both intrastate and interstate authority sought.

HEARING: Not yet assigned. Requests for procedural information including the time for filing protests, concerning this application should be addressed to the Railroad Commission of Texas, Austin, Tex. 78711, and should not be directed to the Interstate Commerce Commission.

State Docket No. 3220, filed February 9, 1968. Applicant: SOUTHWESTERN MOTOR TRANSPORT, INC., Post Office Box 9186, San Antonio, Tex. 78204. Applicant's representative: Ewell H. Muse, Jr., 415 Perry Brooks Building, Austin, Tex. 78701. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities;* (1) between junction of State Highway 44 and U.S. Highway 59 three miles west of Feer and junction of State Highway 44 and U.S. Highway 83 via Encinal; (2) between junction of State Highway 9 and U.S. Highway 59 and Big Wells, Tex., from junction of State Highway 9 and U.S. Highway 59 over U.S. Highway 59 to George West, thence over U.S. Highway 281 to Three Rivers, thence over State Highway 72 to junction between State Highway 72 and State Highway 97, thence over State Highway 97 to Cotulla, Tex., thence over Farm Road 468 to junction point between Farm-to-Market Road 468 and State Highway 85; (3) from junction of U.S. Highway 83 and Farm Road 1025 approximately 7 miles north of Crystal City over Farm Road 1025 to junction with Farm Road 117, thence over Farm Road 117 to its junction with State Highway 57, serving the properties and warehouse of California Packing Corp.; (4) from junction U.S. Highway 81 and State Highway 57 approximately 10 miles north of Pearsall over State Highway 57 to junction with Farm Road 140; (5) from Big Wells over Farm Road 1867 to junction with

Farm Road 1025; (6) from junction U.S. Highway 277 and Farm Road 191 approximately 9 miles northwest of Carrizo Springs over Farm Road 191 to its junction with U.S. Highway 83, and (7) from Caterina over U.S. Highway 83 to junction with U.S. Highway 81 approximately 3 miles south of Webb, coordinating the service proposed over the foregoing routes with the service now rendered by applicant under its existing routes and serving no additional points not presently authorized to be served by applicant, and the junction between State Highway 9 and U.S. Highway 59 for the purpose of joinder only. Both intrastate and interstate authority sought.

HEARING: Not yet assigned, Requests for procedural information, including the time for filing protests, concerning this application should be addressed to the Railroad Commission of Texas, Austin, Tex. 78711, and should not be directed to the Interstate Commerce Commission.

State Docket No. 3813, filed February 15, 1968. Applicant: SUBURBAN CHARTER COACHES, INC., 10000 Acoma, S.E., Albuquerque, N. Mex. Certificate of public convenience and necessity sought to operate a scheduled passenger service as follows: Transportation of *passengers and their baggage*, between points in Bernalillo, Sandoval, and Santa Fe Counties, N. Mex., over regular routes, under scheduled service. Restriction: No service to passengers destined to points and places now served by scheduled common (bus) carriers. (Seasonal operation is indicated on the schedule.) Both intrastate and interstate authority sought.

HEARING: Friday, March 15, 1968, at 9:30 a.m., at the New Mexico Motor Carriers Association, Inc., 1500 Hannett Avenue, Northeast Albuquerque, N. Mex. Request for procedural information, including the time for filing protests concerning this application should be addressed to the New Mexico State Corporation Commission, Motor Carrier Division, Post Office Box 1269, Santa Fe, N. Mex. 87501, and should not be directed to the Interstate Commerce Commission.

State Docket No. MC 4496 (Sub-No. 5), filed January 30, 1968. Applicant: MID-SOUTH TRANSPORTS, INC., 1046 Arkansas, Memphis, Tenn. Applicant's representative: Dale Woodall, 900 Memphis Bank Building, Memphis, Tenn. 38103. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, excluding household goods, commodities in bulk, and those requiring special equipment: (1) From Nashville to Paris, Tenn., over U.S. Highway 70 to Huntingdon, Tenn., thence over Tennessee Highway 22 to McKenzie, Tenn., thence over U.S. Highway 79 to Paris, Tenn., serving all intermediate points between Huntingdon and Paris, Tenn., but serving no intermediate points between Nashville and Huntingdon, Tenn., and return over the same route. NOTE: Applicant proposes to use requested authority in conjunction with all of applicant's existing authority. (2) Alternate Routes: (a) From Nashville to Paris, Tenn., over Interstate I–40 to its junction with Tennessee Highway 22, thence over Tennessee Highway 22 to McKenzie, Tenn., thence over U.S. Highway 79 to Paris, Tenn., and return over the same route, (b) from Nashville to Huntingdon, Tenn., over U.S. Highway 41A to Clarksville, thence over U.S. Highway 79 to McKenzie, thence over Tennessee Highway 22 to Huntingdon, Tenn., and return over the same route. NOTE: Applicant does not propose any point on alternate routes not authorized under the route proposed in (1) above. Both intrastate and interstate authority sought.

HEARING: Tuesday, March 19, 1968, 9:30 a.m., C–1–110 Cordell Hull Building, Nashville, Tenn. Requests for procedural information, including the time for filing protests concerning this application should be addressed to the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. 37219, and should not be directed to the Interstate Commerce Commission.

State Docket No. 49941, filed January 12, 1968. Applicant: AMERICAN TRANSFER CO., 2810 Jensen Avenue, Fresno, Calif. 93706. Applicant's representative: William H. Kessler, 638 Divisadero Street, Fresno, Calif. 93721. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*. Applicant operates a highway common carrier service under and pursuant to Decision No. 63024, dated January 9, 1962, in application No. 43207, hereinafter sometimes referred to as "Basic Certificate," and Decision No. 65633, dated July 2, 1963, in Application No. 45407, hereinafter sometimes referred to as "Reilley Certificate." The operative rights acquired by said Decision No. 65633 were created by Decision No. 60572, as modified by Decision No. 60876, in Application No. 41511, and Decision No. 63241, in Application No. 43948. Applicant's basic certificate authorizes transportation of general commodities between: (1) Fresno, on the one hand, and San Francisco, Pittsburg, and Decoto, on the other hand, (2) San Francisco, on the one hand, and Stockton, on the other hand, (3) Pittsburg, on the one hand, and Pinedale, on the other hand. Said certificate does not authorize service to or from intermediate points. Said Reilley certificate authorized transportation of general commodities between the following points: (1) Between the San Francisco Territory (as described in appendix B attached hereto), Castro Valley, Dublin, Giant, Hercules, Livermore, Nitro, Parks Air Force Base, Pinole, Pleasanton, Radum, San Pablo, Santa Rita, Sobrante, and Trevarno, on the one hand, and, on the other hand, all points on, along and within 15 miles laterally of the following highways:

(a) U.S. Highways 99, 99E, and 99W from Fresno on the south and Lincoln and Dunnigan on the north, (b) State Highways 33, 152, and 180 between Tracy and Fresno, inclusive, (c) U.S. Highway 50 between Dublin and Stockton, inclusive, (d) State Highway 4 between Vallejo and Stockton, inclusive; (2) to, from, and between the points specified in subparagraphs (a) through (d), inclusive. Applicant may use all available routes to provide the service hereinabove described. Both applicant's basic certificate and applicant's Reilly certificate are subject to standard restrictions and limitations; and, in addition thereto, the said Reilley certificate prohibits the transportation of; (3) commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment. This application involves only the foregoing limitation or restriction which has the effect of prohibiting applicant from transporting commodities subject to temperature control to, from, or between intermediate points but not to, from, or between terminal points for the reason that applicant's basic certificate is revoked only to the extent that it duplicates operative rights granted by the Reilley certificate. By this application applicant seeks no enlargement or extension of points or territory served pursuant to its two said certificates.

Applicant also serves as a petroleum irregular route carrier and as a highway permit carrier between various places within the State of California. Applicant now requests the Commission to remove Limitation No. 4 appearing on Page 2 of Appendix A to Decision No. 60572 and, by such removal, to grant to applicant authority pursuant to sections 1063, 1064, and 1065 of the Public Utilities Code of the State of California and section 206(a)(6) of the Interstate Commerce Act (Title 49 U.S.C. 306) to transport commodities requiring temperature control and requiring the use of special refrigerated equipment to, from, and between all points authorized to be served by applicant's said Reilley certificate. The effect would be to grant applicant the authority to perform refrigerated or temperature control service, to, from, and between all points authorized to be served. Both intrastate and interstate authority sought.

HEARING: Not yet assigned for hearing. Request for procedural information, including the time for filing protests concerning this application should be addressed to the California Public Utilities Commission, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, Calif. 94102, and should not be directed to the Interstate Commerce Commission.

State Docket No. A 50024, filed February 16, 1968. Applicant: LEMORE TRANSPORTATION, INC., 3323 Nutmeg Lane, Walnut Creek, Calif. 94104. Applicant's representative: Raymond A. Greene, Jr., 405 Montgomery Street, San Francisco, Calif. 94104. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, except used household goods, automobiles, trucks and buses, livestock, and fresh fruits and vegetables, between points and places in Alameda, Contra

Costa, and Solano Counties, Calif., utilizing for such service all streets, highways, and routes in said counties. Both intrastate and interstate authority sought.

HEARING: Not yet assigned for hearing. Request for procedural information, including the time for filing protests concerning this application, should be addressed to the California Public Utilities Commission, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, Calif. 94102, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68-2430; Filed, Feb. 27, 1968; 8:48 a.m.]

[Notice 555]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

FEBRUARY 23, 1968.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC 67 (49 CFR Part 340) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 8989 (Sub-No. 212 TA), filed February 19, 1968. Applicant: HOWARD SOBER, INC., 2400 West St. Joseph Street, Post Office Box 1228, Lansing, Mich. 48904. Applicant's representative: Joseph Gracia (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tow tractors*, in truckaway service, from De Kalb, Ill., to points in the United States, including Alaska, but excluding Hawaii, and *damaged or rejected shipments* from points in the United States to De Kalb, Ill., for 180 days. Supporting shipper: De Kalb Commercial Body Corp., De Kalb, Ill. 60115. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 221 Federal Building, Lansing, Mich. 48933.

No. MC 10761 (Sub-No. 222 TA), filed February 19, 1968. Applicant: TRANS-AMERICAN FREIGHT LINES, INC., 1700 North Waterman Avenue, Detroit, Mich. 48209. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel, iron and steel articles, and materials, equipment, and supplies used in the manufacture and processing of iron and steel and iron and steel articles*, between points in Putnam County, Ill., on the one hand, and, on the other, points in Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia. Restrictions: (1) Against the transportation of commodities in bulk; (2) To traffic originating at or destined to points in Putnam County, Ill., or the plantsite of Jones & Laughlin Steel Corp. at or near Hennepin, Putnam County, Ill., for 150 days. Supporting shipper: Jones & Laughlin Steel Corp., 3 Gateway Center, Pittsburgh, Pa. 15230. Send protests to: Gerald J. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell, Detroit, Mich. 48226.

No. MC 50069 (Sub-No. 397 TA), filed February 19, 1968. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 930 North York Road, Hinsdale, Ill. 60521. Applicant's representative: Albert A. Andrin, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, from the plantsite of United States Steel Corp., at or near Tilton, Ill., to points in Iowa, Minnesota, and Missouri (except St. Louis, Mo.), for 180 days. Supporting shipper: United States Steel Corp., 400 Manor Building, Pittsburgh, Pa. 15230. Sent protests to: William E. Gallagher, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1086, U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 55236 (Sub-No. 155 TA), filed February 19, 1968. Applicant: OLSON TRANSPORTATION COMPANY, 1970 South Broadway, Post Office Box 1187, Green Bay, Wis. 54304. Applicant's representative: G. R. Richmond (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid nitrogen fertilizer solution*, in bulk, in tank vehicles, from the plantsite of the Borden Chemical Co., Smith-Douglass Division, at or near Logansport, Ind., to points in Michigan, Ohio, and Kentucky, for 180 days. Supporting shipper: The Borden Chemical Co., Smith-Douglass Division, Post Office Box 419, Norfolk, Va. 23501 (Dean H. Morton, Chief Traffic Analyst). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 66462 (Sub-No. 11 TA), filed February 19, 1968. Applicant: THE WILLETT COMPANY, 700 South Desplaines Street, Chicago, Ill. 60607. Applicant's representative: Daniel E. Sweeney, One North La Salle Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from plantsite of Jones & Laughlin Steel Corp., Putnam County, Ill., to points in Indiana, for 180 days. Supporting shipper: Jones & Laughlin Steel Corp., 3 Gateway Center, Pittsburgh, Pa. 15230. Send protests to: William E. Gallagher, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1086, U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 107010 (Sub-No. 35 TA), filed February 19, 1968. Applicant: D & R BULK CARRIERS, INC., Post Office Box 106, Auburn, Nebr. 68305. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nitrogen fertilizer solution*, in bulk, in tank vehicles, from the Storage facilities of Terra Chemicals, Lincoln Air Base, Nebr. (Air Park West), to points in Nebraska, Missouri, Kansas, Wyoming, Colorado, and South Dakota, for 150 days. Supporting shipper: Terra Chemicals International, Inc., 507 Sixth Street, Sioux City, Iowa 51101. Send protests to: District Supervisor Johnston, Bureau of Operations, Interstate Commerce Commission, 315 Post Office Building, Lincoln, Nebr. 68508.

No. MC 107227 (Sub-No. 100 TA), filed February 19, 1968. Applicant: INSURED TRANSPORTERS, INC., 1944 Williams Street, Post Office Box 94577, San Leandro, Calif. 94577. Applicant's representative: Lawrence H. Berry (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General purpose wheeled amphibious motor vehicles*, in initial movements, in truckaway service, from Chico, Calif., to points in Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming, for 150 days. Supporting shipper: Coot, Inc., Suite 137, World Trade Center, Ferry Building, San Francisco, Calif. Send protests to: District Supervisor Willima E. Murphy, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 107403 (Sub-No. 739 TA), filed February 19, 1968. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, in bulk, in tank vehicles, from Ennis, Tex., to Palestine, Tex. (having a prior movement by rail from Westvaco, Wyo.), for 150 days. Supporting shipper: FMC Corp., 633 Third Avenue, New York,

N.Y. 10017. Send protests to: Ross A. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 900 U.S. Customhouse, Second and Chestnut Streets, Philadelphia, Pa. 19106.

No. MC 116014 (Sub-No. 37 TA), filed February 19, 1968. Applicant: OLIVER TRUCKING COMPANY, INC., Post Office Box 53 Lexington Road, Winchester, Ky. 40391. Applicant's representative: Louis J. Amato, Post Office Box E, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from the plantsites of the Conway Corp. and the Van Keulen & Winchester Lumber Co., Grand Rapids, Mich., to Carrollton, Ky., for 180 days. Supporting shipper: Robert W. Kenyon, Operations Manager, Eisen Brothers, Inc., 601 Fourth Street, Carrollton, Ky. Send protests to: R. W. Schneiter, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 207 Exchange Building, 147 North Upper Street, Lexington, Ky.

No. MC 116100 (Sub-No. 1 TA), filed February 19, 1968. Applicant: WILFRED A. LABOUBE, Berger, Mo. 63014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid nitrogen*, from Military, Kans., and Henderson, Ky., to Maczuk, Inc., New Haven, Mo., and other points in the State of Missouri where they have storage facilities, as follows: Storage facilities are located at East Lynne, Wakenda, Hughesville, Jefferson City, Tibbets, Chamois, Rhineland, McKittrick, Berger, New Haven, Washington, Labadie, Defiance, Augusta, Marthasville, Wentzville, Joanesburg, St. Charles, Missouri, West Alton, and Kingdom City, Mo., for 120 days. Supporting shipper: Maczuk, Inc., New Haven, Mo. 63068. Send protests to: J. P. Werthmann, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 3248–B, 1520 Market Street, St. Louis, Mo. 63103.

No. MC 116145 (Sub-No. 7 TA), filed February 19, 1968. Applicant: G. G. PARSONS TRUCKING CO., Post Office Box 1085, North Wilkesboro, N.C. 28659. Applicant's representative: Francis J. Ortman, Suite 770, Mills Building, 1700 Pennsylvania, Washington, D.C. 20006. Authority sought to operate as *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass bottles* from Shelby, Ohio, to points in Georgia, North Carolina, South Carolina, New Jersey, that part of New York east of a line beginning at Oswego and extending along New York Highway 57 to Syracuse, thence along U.S. Highway 11 to the New York-Pennsylvania State line, and to Rocky Mount, Va. Restriction: The service to be limited to transportation service to be performed under a continuing contract with Chattanooga Glass Co., Inc., Chattanooga, Tenn., successor to The Lamb Glass Co., Mount Vernon, Ohio, for 150 days. Supporting shipper: Chattanooga Glass Co., Chattanooga, Tenn. 37410, Attention: Herbert L. Oakes, President. Send protests to: Jack K. Huff, District Supervisor, Bureau of Operations, Interstate Commerce Commission, BSR Building, Suite 417, 316 East Morehead Street, Charlotte, N.C. 28202.

No. MC 124078 (Sub-No. 319 TA), filed February 19, 1968. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, Wis. 53215. Applicant's representative: Richard H. Prevette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, from the plantsite of United States Steel Corp., at or near Tilton, Ill., to points in Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin, for 180 days. Supporting shipper: United States Steel Corp., 400 Manor Building, Pittsburgh, Pa. 15230 (C. M. Bunting, Assistant Manager, Chemical Traffic). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 126045 (Sub-No. 11 TA), filed February 19, 1968. Applicant: ALTER TRUCKING AND TERMINAL CORPORATION, 2333 Rockingham Road, Post Office Box 3122 (52808), Davenport, Iowa 52802. Applicant's representative: John W. Lavender (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Diammonium phosphate*, in bulk, from Depue, Riverdale, and Colfax, Ill., and Des Moines, Iowa, to points in Illinois, Iowa, Wisconsin, Missouri, Minnesota, Nebraska, South Dakota, North Dakota, Indiana, Ohio, and Michigan. Restricted to traffic originating at the plantsites or warehouse facilities of the New Jersey Zinc Co., for 180 days. Supporting shipper: The New Jersey Zinc Co., 160 Front Street, Davenport, Iowa 52801. Send protests to: Chas. C. Biggers, District Supervisor, Interstate Commerce Commission, Room 332, Federal Building, 131 East Fourth Street, Davenport, Iowa 52801.

No. MC 129049 (Sub-No. 1 TA), filed February 19, 1968. Applicant: HAULAWAY, INC., 12804 East Firestone Boulevard, Santa Fe Springs, Calif. 90670. Applicant's representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, Ill. 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Travel trailers, parts, and accessories when shipped therewith in initial movement*, from points in Los Angeles County, Calif., to points in Washington, Oregon, Idaho, Utah, Montana, Colorado, Wyoming, Nebraska, Oklahoma, Texas, New Mexico, Arizona, Nevada, South Dakota, and Kansas, for 150 days. Supporting shipper: Airstream, Inc., 12804 East Firestone Boulevard, Santa Fe Springs, Calif. Send protests to: John E. Nance, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Federal Building, Room 7708, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 129703 (Sub-No. 1 TA), filed February 19, 1968. Applicant: ROBERT VAN STRIEN, 2777 Cascade Spring Drive SE., Grand Rapids, Mich. 49506. Applicant's representative: Karl L. Gotting, Union Savings & Loan Building, 117 West Allegan Street, Lansing, Mich. 48933. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Products manufactured or distributed by The Borden Co.*, from Milwaukee, Wis., to Grand Rapids, Mich., for The Borden Co., for 180 days. Supporting shipper: The Borden Co., Michigan Region, 30550 Stephenson Highway, Madison Heights, Mich. 48071. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 221 Federal Building, Lansing, Mich. 48933.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 68–2431; Filed, Feb. 27, 1968; 8:48 a.m.]

[Notice 96]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 23, 1968.

Synopses of orders entered pursuant to Section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 279), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC–70243. By order of February 20, 1968, the Transfer Board approved the transfer to Leroy Peterson, doing business as Peterson Trucking, Ellsworth, Wis., of the operating rights in certificate No. MC–93924 issued November 7, 1958, to Harold Peterson, Ellsworth, Wis., authorizing the transportation of livestock and farm products, from the village of Ellsworth, Wis., and points in the towns of Trenton, Hartland, Diamond Bluff, Trimbelle, Ellsworth, and Oak Grove, Pierce County, Wis., to South St. Paul, Newport, and Red Wing, Minn.; and general commodities, with usual exceptions, between points in Hartland, Salem, and Ellsworth Townships, Pierce County, Wis., on the one hand, and, on the other, St. Paul, South St. Paul, Minneapolis, and Red Wing, Minn. A. R. Fowler, 2288 University Avenue, St. Paul, Minn. 55554, representative for applicants.

No. MC–FC–70248. By order of February 21, 1968, the Transfer Board approved the transfer to Loretta M. Greenlee, doing business as Ozark Transfer, De Soto, Mo., of the operating rights in certificate of registration No. MC–120578

(Sub-No. 1), issued April 29, 1965, to John T. Greenlee, Loretta M. Greenlee, surviving spouse, doing business as Ozark Transfer, De Soto, Mo., authorizing the transportation, as a common carrier, of freight as set forth in Missouri certificate of convenience and necessity No. T-15, 114, dated May 11, 1960, and rights merged therein by order dated May 18, 1962. Herman W. Huber, 101 East High Street, Jefferson City, Mo. 65101, attorney for applicants.

No. MC-FC-70251. By order of February 20, 1968, the Transfer Board approved the transfer to Rocket Towing Co., Inc., Portland, Oreg., of the operating rights in certificate No. MC-94792 issued February 8, 1962, to Donald K. Robbins, doing business as Rocket Ambulance & Towing Service, Portland, Oreg., authorizing the transportation of used or disabled motor vehicles and used machinery without motor power, by driveaway of towaway methods, between points in Washington and Oregon. Earle V. White, 2400 Southwest Fourth Avenue, Portland, Oreg. 97201, attorney for applicants.

[SEAL] H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-2432; Filed, Feb. 27, 1968; 8:48 a.m.]

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PART II

Department of Agriculture

Consumer and Marketing Service

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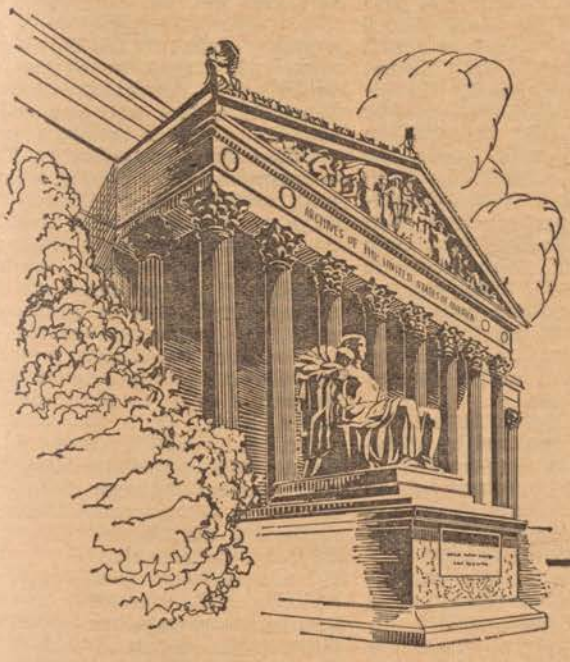
Milk in Northeastern Ohio, Greater Youngstown-Warren and Greater Wheeling Marketing Areas

Decision



THE NATIONAL ARCHIVES OF THE UNITED STATES
LITTERA SCRIPTA MANET
1934

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1008, 1036, 1048]

[Docket Nos. AO–179–A28, AO–325–A8, AO–268–A12]

MILK IN NORTHEASTERN OHIO, GREATER YOUNGSTOWN-WARREN, AND GREATER WHEELING MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Cleveland, Ohio, on March 14–16, 1967, at Pittsburgh, Pa., on March 20–23, 29–31, and April 3–7, 19, and 20, 1967, and at Erie, Pa., on March 28, 1967, pursuant to notice thereof issued on February 17, 1967 (32 F.R. 3156).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on November 16, 1967 (32 F.R. 15952; F.R. Doc. 67–13667) filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision (32 F.R. (15952; F.R. Doc. 67–13667) are hereby approved and adopted and are set forth in full herein subject to the following modifications:

1. Under the subheading "*Definition of plants.*" in Issue 3(a):

(a) The last sentence in the 18th paragraph is changed.

(b) The 29th paragraph is deleted and three new paragraphs are substituted therefor.

(c) The 38th paragraph is changed.

(d) The second sentence in the 40th paragraph is changed.

2. Under the subheading "(b) *Classification of milk.*" in Issue 3:

(a) The first sentence in the fourth paragraph is changed.

(b) The seventh paragraph is changed and two new paragraphs are added immediately thereafter.

3. Under the subheading "*Class I price.*" in Issue 3(c), five new paragraphs are added immediately after the 25th paragraph.

4. Under the subheading "*Location adjustments.*" in Issue 3(c):

(a) The second paragraph is changed.

(b) A new paragraph is added immediately after the eighth paragraph.

(c) The 16th paragraph is changed.

The material issues on the record of the hearing relate to:

1. Whether the handling of milk produced for sale in the proposed merged and expanded marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether the marketing areas of the present Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling orders and other specified territory in Ohio and Pennsylvania should be included under one order; and

3. If an order is issued for one milk marketing area in the manner proposed, what its provisions should be with respect to:

(a) Milk to be priced and pooled;

(b) Classification;

(c) Class prices, butterfat differentials, and location differentials;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

1. *Character of commerce.* The handling of milk in the proposed merged and expanded marketing area is in the current of interstate commerce and directly burdens, obstructs, and affects interstate commerce in milk and milk products.

The marketing area specified in the proposed order, hereinafter referred to as the "Eastern Ohio-Western Pennsylvania marketing area", includes contiguous territory in 20 Ohio counties, 14 Pennsylvania counties and four West Virginia counties. The principal cities in this marketing area are Cleveland, Akron, Canton, and Youngstown in Ohio, Pittsburgh and Erie in Pennsylvania, and Wheeling, W. Va. The specific territory in the proposed marketing area is set forth in the marketing area discussion.

Handlers in the proposed area receive milk from dairy farms located in several States. Of the 14.4 million pounds of producer milk received by Wheeling order handlers in May 1967, 75 percent was delivered by Ohio producers, 19 percent by West Virginia producers, and 6 percent by producers in Pennsylvania. (Official notice is taken of the "Market Administrator's Report" for the Wheeling market for July 1967.) In December 1966, 46 percent of the 20.1 million pounds of producer milk under the Youngstown-Warren order came from Ohio farms, 52 percent from Pennsylvania farms, and 2 percent from New York farms. In the Northeastern Ohio area in December 1966, Ohio producers supplied 81 percent of the total producer milk supply of 139.7 million pounds. In addition, 13 percent of the total came from Indiana producers, 4 percent from Pennsylvania producers, and 2 percent from Michigan producers.

In 1966, 20 percent of the 1,108 million pounds of bulk milk received by Pittsburgh area fluid milk dealers came from outside Pennsylvania. Receipts in the Erie area from out-of-State sources in 1965 were 7.5 percent of the 186 million pounds of bulk milk received by fluid milk dealers in that area. At least four Ohio plants are regular sources of milk for Western Pennsylvania dealers.

Packaged milk also moves in interstate commerce within the proposed marketing area. Such movements include sales in Pennsylvania and West Virginia by Ohio handlers and in Ohio by Pennsylvania and West Virginia dealers.

Manufactured milk products likewise are involved in interstate commerce in the proposed area. Representative of this is the distribution throughout Western Pennsylvania of cottage cheese and sour cream from an Ohio plant specializing in the manufacture of these products.

2. *Need for merger and expansion of the marketing areas.* Marketing conditions in the Ohio, Pennsylvania, and West Virginia territory under consideration justify the issuance of a single merged order regulating the handling of milk in this territory.

The marketing area of the proposed order should include all the territory in the presently designated marketing areas of the Northeastern Ohio, Youngstown-Warren, and Wheeling orders and certain other territory in Ohio and Pennsylvania. The additional areas in Ohio are Carroll, Geauga, and Tuscarawas Counties and those parts of Ashtabula, Columbiana, Mahoning, and Portage Counties not now included in any Federal order marketing area. In Pennsylvania, the territory to be included is that in Areas 2 and 7 as defined by the Pennsylvania Milk Control Commission (PMCC). These two Pennsylvania areas encompass Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Lawrence, Mercer, Venango, and Washington Counties; in Clarion County, the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby; and all of Westmoreland County except the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward and the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair.

The merger of the three orders and extension of Federal regulation into certain Western Pennsylvania areas was proposed by four cooperative associations. One cooperative is a principal producer group in the Pittsburgh area, represents a majority of the producers under the Youngstown-Warren and Wheeling orders, and also markets the milk of producer-members under the Northeastern Ohio order. Another major cooperative sells 41 percent of its member milk to Youngstown-Warren handlers, 26 percent to Pittsburgh area handlers, 26 percent to Erie area handlers, and 7 percent to Northeastern Ohio handlers. Another of the producer groups represents nearly half of the producers whose milk is pooled under the Northeastern Ohio order. The fourth proponent cooperative also has a number of members delivering milk to Northeastern Ohio order plants.

On the basis of the cooperatives' proposal, other cooperatives and handlers made various proposals to include in the marketing area of a single order certain additional territory in Ohio and Pennsylvania. Collectively, all proposals under consideration would encompass, in addition to the marketing area proposed herein, the remainder of Westmoreland County, Pa., and in Ohio those parts of Medina and Wayne Counties not now included in any marketing area. It was proposed also that the PMCC Areas 2

and 7 be regulated under a separate order.

Regulation of Western Pennsylvania. The market uncertainty facing Pennsylvania dairy farmers who supply milk to distributors in Western Pennsylvania is largely the result of marketing conditions that can be remedied best by the application of Federal order regulation to the area.

The Western Pennsylvania area under consideration includes all or parts of 14 counties that are nearest the bordering States of Ohio and West Virginia. Of this area, Erie County and Venango Township and the boroughs of Cambridge Springs and Venango in Crawford County make up Area 7 under the PMCC regulations. Area 2 consists of the remainder of the Western Pennsylvania territory. In 1960, the population of Western Pennsylvania was 3,435,000, with nearly half of the people being in the Pittsburgh metropolitan area. This may be compared with the population of 4,140,000 for the remainder of the marketing area proposed herein.

About 140 fluid milk dealers were operating in Western Pennsylvania during the 1965–66 licensing year. Of these, 114 were Area 2 dealers and 26 were in Area 7. In addition, there were 76 dealers in the two areas whose sources of supply are primarily their own production. About 1,108 million pounds of milk were handled by Area 2 fluid milk dealers in 1966 and over 186 million pounds by Area 7 dealers in 1965 (Area 7 data for 1966 are not available in the record). Approximately 3,600 dairy farmers were delivering milk in 1966 to Area 2 plants. Area 7 dealers received milk from about 630 dairymen in 1965.

The PMCC regulations for Areas 2 and 7 prescribe minimum prices that Pennsylvania handlers must pay for milk received from producers at Pennsylvania plants. The PMCC does not, however, regulate the price of milk received from sources outside the State. The inability of the State to price milk involved in interstate commerce provides an incentive for Western Pennsylvania handlers to secure milk supplies from out-of-State sources at prices that are lower than those required to be paid for milk received from Pennsylvania producers.

In 1965, 125.4 million pounds of milk were so obtained by Area 2 handlers at an average of 49 cents per hundredweight less than the PMCC's minimum prices. Of this amount, 31.6 million pounds were obtained from receiving stations at prices averaging 63 cents per hundredweight under PMCC prices. As indicated previously, 20 percent of the 1,108 million pounds of milk received by Pittsburgh area fluid milk dealers in 1966 came from outside Pennsylvania. Receipts in the Erie area from out-of-State sources in 1965 were 7.5 percent of the 186 million pounds of milk received by Area 7 fluid milk dealers.

The imported supplies cited above do not include movements of packaged milk into Western Pennsylvania from out-of-State plants. Such sales, to which PMCC prices do not apply, are becoming an increasingly significant factor in the market.

Not only do Western Pennsylvania handlers have an incentive to seek outside supplies but their procurement of such supplies is facilitated because they are desirable outlets for unregulated out-of-State plants and their producers. Milk otherwise destined for manufacturing use can be sold for Class I purposes at prices above the manufacturing milk price but below the PMCC's Class I price. As a practical matter, such prices need to be only high enough to provide these out-of-State producers with total returns that are comparable with those obtainable from alternative outlets. Witnesses testified that Class I milk is purchased by Pennsylvania handlers from Ohio producers at approximately the Ohio Federal order blend prices.

Because of the geographical location of Western Pennsylvania handlers, milk supplies in other States are reasonably accessible to such handlers. Additionally, improvements in roads and transportation equipment have facilitated the acquisition of such supplies. At least four Ohio plants (receiving stations and supply plants) located at Andover, Dorset, Newcomerstown, and Beloit are regular sources of milk for Western Pennsylvania handlers.

The lack of effective price control on interstate milk movements has caused both producers and handlers to take various actions that have tended to create a condition of uncertainty and instability in the market. Handlers have exploited this situation by obtaining milk from out-of-State sources at less than PMCC prices applicable to Pennsylvania produced milk. Faced with the actual or potential loss of Class I outlets to cheaper out-of-State supplies, Pennsylvania cooperatives have supplied Pennsylvania handlers with Ohio produced milk at prices below those established by the PMCC for milk produced in Pennsylvania. Also, cooperatives have avoided PMCC producer price regulations by shipping Pennsylvania produced milk into Ohio and then back to Pennsylvania handlers. In an attempt to gain a more secure market, some Western Pennsylvania producers have shifted from Pennsylvania based plants to various Ohio Federal order plants.

During recent years, the PMCC established Class I prices which witnesses described as unrealistically high relative to the prices existing in the nearby Ohio markets. In 1964, for example, the PMCC Class I price for Area 2 averaged $1.11, and in one month was as much as $1.57, above the average Class I price in the Northeastern Ohio market. During that time, Western Pennsylvania producers faced intense competition from Ohio milk and resorted to rebates to Western Pennsylvania dealers to hold their Class I outlets. Price decreases in April and August 1964 lowered the Area 2 price by a total of 77 cents per hundredweight, thereby relieving some of the competitive pressure. While rebates are reportedly nonexistent today, there is no assurance under an inadequate classified pricing system that the pressures for lower prices will not again be manifested in this or some other disruptive manner.

Under the State's regulatory program, producers supplying Western Pennsylvania handlers have limited assurance that the returns for their milk will be commensurate with its full economic value. The PMCC orders for Areas 2 and 7 provide for a lower Class I price to be applicable to milk sold by a handler outside his area. In 1966, these prices ranged from 10 to 20 cents per hundredweight below the stated Class I prices in the Pittsburgh and Erie areas. In addition, handlers meeting certain requirements may pay their producers on an "optional" basis. The minimum prices under this plan are about 10 cents below the stated Class I prices. Also, sales of "distressed" fluid milk may be made by handlers for use in certain manufactured products at prices less than the PMCC Class II price. Returns to producers for distressed milk reflect whatever price the handler obtains for the milk less his transportation and handling charges.

The inability of Western Pennsylvania producers to compete equally with out-of-State milk supplies for fluid outlets tends to create instability in the market. The availability of cheaper milk weakens producers' bargaining position and lessens their ability to compete effectively for a Class I market for their milk. Producers in this situation cannot plan their future production program with the certainty of marketing conditions needed for sound management decisions. The proponent cooperatives contend that only a device such as a Federal milk order can provide the marketing environment in which producers may obtain the full economic value of their milk under orderly marketing conditions.

As long as all milk supplies for Western Pennsylvania are not subject to a fully effective classified pricing system, the uncertainty for Western Pennsylvania producers can be expected to continue. This could discourage the continuation of the necessary production resources and thereby threaten the maintenance of an adequate supply of milk for Western Pennsylvania. The application of Federal order regulation to Western Pennsylvania will provide the needed market stability.

All territory in the PMCC Areas 2 and 7 should be included in the marketing area of the proposed Eastern Ohio-Western Pennsylvania order. These areas are the basic sales areas within Pennsylvania of most Pennsylvania handlers who would be regulated under the order. Many of the handlers have distribution routes extending throughout each of the areas and compete with one another for Class I sales. Fluid sales by these handlers in other parts of Pennsylvania are not significant. Similarly, sales in Areas 2 and 7 by handlers operating primarily in other Pennsylvania areas are also insignificant. Western Pennsylvania handlers, while opposing any extension of Federal regulation to that part of the State, indicated that if an order does apply present distribution patterns warrant the inclusion in the marketing area of Areas 2 and 7 in their entirety. On

the basis of these factors, it would be inappropriate to exclude from the proposed marketing area any part of Areas 2 and 7.

The Westmoreland County townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair and the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward should not be included in the proposed marketing area. Such areas are included in Area 9 under the PMCC's regulatory program. Some of the sales in this part of Area 9 are made by one or more Area 9 handlers who would not be regulated under the order as proposed herein. Other sales are made by a Pittsburgh handler who advocated the exclusion of these Westmoreland County areas. Evidence does not indicate that the inclusion of such areas in the proposed marketing area is necessary at this time to achieve orderly marketing conditions in Western Pennsylvania.

Regulation of certain Ohio, Pennsylvania, and West Virginia markets under one order. Regulation of the Northeastern Ohio, Youngstown-Warren, and Wheeling marketing areas and PMCC Areas 2 (Pittsburgh) and 7 (Erie) under a single order is the most appropriate means of effectuating the declared policy of the Act. A single Federal order establishing uniform class prices at reasonable levels with a marketwide pool for distributing returns to the producers supplying the market will provide a regulatory program for milk marketing consistent with current marketing conditions and practices.

When the Northeastern Ohio, Youngstown-Warren, and Wheeling orders were issued, they regulated areas that were generally distinguishable as separate markets for particular groups of producers. Similarly, the Pennsylvania Areas 2 and 7 have been considered as separate markets and regulated under separate State marketing orders. Changes in marketing practices during recent years, however, have caused these areas to become generally interrelated in both the procurement and distribution of milk. In view of the marketing trends prevailing throughout these areas, it may reasonably be expected that the interrelationship of the several areas will become even more pronounced in the future.

Sales areas of handlers are no longer confined to local areas. Better highways, improved transportation and refrigeration facilities, and the advent of single-service containers have made it feasible to move packaged milk over long distances. As local health department requirements have become less of an impeding factor, handlers have extended their distribution routes into other areas. The potential sales outlets in the various populated centers, and particularly the increasingly important supermarket business, have encouraged the widespread distribution patterns now prevailing.

Handlers, in attempting to achieve better economies of scale, have concentrated their processing and packaging operations in larger plants that contain the specialized equipment necessary to package milk in the many sizes and types of containers in use today. This has resulted in an increasingly wider geographic distribution from fewer and larger plants. The areas under consideration either adjoin each other or are relatively close to one another. Because distributing plants are scattered widely throughout these areas, only short distances are involved in many cases for operators of these plants to extend their distribution routes into another marketing area.

Some intermarket route distribution patterns in the proposed marketing area were cited in the record. A plant located in the Northeastern Ohio marketing area that is regulated under the Youngstown-Warren order recently began supplying 46 stores in Western Pennsylvania. These stores were formerly served by a Pittsburgh handler. A number of Western Pennsylvania stores are supplied by a Northeastern Ohio order plant and two Youngstown-Warren order plants, one of which is located in Pennsylvania. Another Pennsylvania plant is regulated by the Youngstown-Warren order by virtue of its Ohio sales in the Youngstown-Warren marketing area. One handler closed his bottling plants in Erie and Youngstown and is now supplying these areas from his Pittsburgh and Cleveland plants. The handler's sales from his Pittsburgh plant are a significant share of the Class I sales in the Erie area. Some Erie handlers have packaged milk sales in parts of the Pittsburgh marketing area.

Approximately one-third of the total Class I sales in the Youngstown-Warren marketing area are made by four or more Northeastern Ohio handlers. In 1966, Youngstown-Warren handlers sold 8 percent of their total Class I milk in the Northeastern Ohio and Wheeling marketing areas. Packaged milk is sold in the Wheeling marketing area by at least two Youngstown-Warren, three Northeastern Ohio, and two Western Pennsylvania handlers. A Wheeling handler sells milk in Western Pennsylvania.

Such distribution patterns are indicative of the general trend of expanding sales areas of handlers. From a practical standpoint, separate markets within the proposed marketing area for particular groups of producers no longer exist. The cooperatives proposing the single order contend that under this circumstance all producers supplying milk to the several parts of the proposed marketing area should share uniformly the total proceeds of the Class I sales in the area and the burden of the reserve and surplus supplies normally associated with such sales.

The desirability of a single order to achieve greater stability and a more equitable distribution of returns to producers is accentuated by the effect on particular producer groups of shifts of Class I sales and supplies among the several regulated areas. In the smaller Youngstown-Warren, Wheeling, and Erie markets, particularly, a major loss of Class I sales to another regulated area can have a significantly adverse effect on the returns to producers supplying the area. Instances were cited where sales had shifted because of plant closings or other changes in handlers' operations. Handlers operating more than one plant, particularly, represent a potential cause of intermarket shifts of sales. At least eight multiple-plant handlers operate in the several areas that would be regulated by the proposed Eastern Ohio-Western Pennsylvania order. Shifts among handlers of large sales accounts, such as chain stores, also can have a major effect on producer returns in any one regulated area.

A relatively large plant specializing in the manufacture of cottage cheese and sour cream products recently became a pool plant under the Northeastern Ohio order. Products from this plant, which was previously associated with the Pittsburgh marketing area, are distributed in many parts of the proposed marketing area. Northeastern Ohio producers alone, however, rather than producers in the several areas supplied by the plant have this lower-valued Class II milk reflected in their returns.

The five areas under consideration are characterized by a substantial overlapping of milksheds. Northeastern Ohio handlers obtain milk from producers located as far east as the Pennsylvania counties of Clarion and Jefferson, which are also part of the Western Pennsylvania milkshed. Western Pennsylvania handlers, on the other hand, receive milk produced as far west as Tuscarawas, Guernsey, and Noble Counties in Ohio, areas that are also sources of milk for Northeastern Ohio and Wheeling handlers. Other Wheeling sources include Washington and Greene Counties in Pennsylvania, areas from which producers also ship to Western Pennsylvania handlers. Handlers in the Youngstown-Warren area purchase milk from producers in a number of Ohio and Pennsylvania counties from which milk is also delivered to Northeastern Ohio and Western Pennsylvania handlers.

While the sanitary inspection standards vary slightly in various parts of the proposed marketing area, there apparently have been no practical limitations on the movement of milk throughout this area. The States of Ohio and West Virginia reciprocate on health approvals. The State of Pennsylvania and the Pennsylvania county of Allegheny, which utilize different inspection standards, have no reciprocity arrangements on inspection requirements with Ohio and West Virginia. However, many Ohio producers and a number of Ohio plants have Allegheny and/or Pennsylvania health permits. It must be concluded that the health requirements throughout the proposed marketing area are not so different as to be an impeding factor in the adoption of a single regulation for the area.

Regulation of additional Ohio territory. Certain territory in Ohio not now included in any Federal order marketing area should be a part of the proposed Eastern Ohio-Western Pennsylvania marketing area. The additional areas are Carroll, Geauga, and Tuscarawas Counties and the presently unregulated parts of Ashtabula, Columbiana, Mahoning, and Portage Counties.

All Class I sales in Geauga and Portage Counties are made by regulated handlers. Sales in Ashtabula, Carroll, and Columbiana Counties are primarily by Northeastern Ohio, Youngstown-Warren, and Wheeling handlers. A producer-distributor type of operation is located in Carroll County and another in Ashtabula County. Four similar operations are in Columbiana County. It is expected that these producer-distributors would be exempt from the pooling and pricing provisions of the proposed order. A few sales are also made in Carroll County by a presently unregulated Tuscarawas County handler who would be regulated under the proposed order. The record does not indicate any sales in the very small unregulated part of Mahoning County by unregulated handlers. By including these areas, the Eastern Ohio-Western Pennsylvania marketing area will more appropriately represent the basic sales areas of the handlers who would be subject to the proposed order. Not to regulate these areas could provide a competitive advantage for any unregulated handler making Class I sales in the areas.

On the basis of his present sales, the addition of Tuscarawas County will result in the regulation of a handler at New Philadelphia, Ohio. The sales of this handler in Tuscarawas County are approximately half of the total fluid milk sales in the county. About 2 percent of the total sales in the county is also made by a producer-distributor. The remaining sales in Tuscarawas County are by Northeastern Ohio handlers and to a very limited extent by a Columbus order handler.

Regulated handlers selling milk in Tuscarawas County are now at a competitive disadvantage relative to the unregulated New Philadelphia handler on the cost of milk obtained from dairy farmers. Such handlers are required under the order to pay minimum Class I prices for all fluid milk distributed on routes while the unregulated handler may pay only whatever price is necessary to attract a sufficient supply. The New Philadelphia dealer is purchasing milk at the Northeastern Ohio blend price, plus whatever premiums Northeastern Ohio handlers are paying. The difference between the Northeastern Ohio Class I and blend prices in 1966 was 51 cents. The dealer indicated his Class I utilization was about 10 percentage points higher than the Northeastern Ohio market's utilization.

A large proportion of the New Philadelphia dealer's fluid milk sales are in Tuscarawas County. Other Ohio counties in which he has sales include Stark, Harrison, and Carroll. These are counties in which regulated handlers make the majority of the Class I sales. By far the greater portion of the New Philadelphia dealer's sales are therefore in competition with sales of regulated handlers. Regulation of this dealer will merely make his procurement costs comparable to those of handlers with whom he competes.

The presently unregulated part (Litchfield, Spencer, Chatham, Homer, Harrisville, Westfield, and Guilford Townships) of Medina County should not be included in the proposed marketing area. Two relatively small unregulated handlers, one at Oberlin and the other at Ashland, have 7 percent and 5 percent, respectively, of their total sales in this area. Sales are also made there by three Northeastern Ohio handlers, although the extent of such sales is not in the record. The record does not indicate, either, the proportion of total sales in these townships by regulated and unregulated handlers.

The inclusion of this area in the proposed marketing area was not shown to be necessary for the maintenance of orderly marketing. Regulated handlers distributing in these townships presented no testimony for or against extending the marketing area to include the additional territory. In the absence of any compelling need for regulation of these townships, their inclusion in the proposed marketing area is denied.

The proposal to include all of Wayne County in the marketing area is similarly denied. Presently, Sections 1, 2, 3, 10, 11, and 12 of Sugar Creek Township in Wayne County are a part of the Northeastern Ohio marketing area. There was no evidence on the need for extending regulation to the rest of the county.

All producer milk received at regulated plants must be subject to classified pricing under the order regardless of whether it is disposed of within or outside the marketing area. Otherwise, the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in-area" sales were subject to classification, pricing, and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he chose to his outside sales. He thereby could reduce the average cost of all his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. Unless all milk of such a handler were fully regulated under the order, he in effect would not be subject to effective price regulation. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to the producers who supply the market. It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

In the course of the operation of the order, the question may arise as to whether waterfront facilities or any territory within the boundaries of the designated marketing area which is occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other establishments shall be considered as within the marketing area. So that there will be no doubt as to the meaning or the intent of the application of the marketing area definition in the order, it should be indicated that the marketing area shall include all waterfront facilities connected with the designated geographical units and any territory wholly or partly within the area which is occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other establishments.

3. (a) *Milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the order. This is accomplished by providing definitions to describe the category of persons, plants, and milk products to which the applicable provisions of the order relate.

The proposed amended order continues in a substantial manner the Northeastern Ohio order provisions which have been appropriate in achieving the ends sought by the regulations. The record shows that they will be no less suitable in achieving these ends under the proposed order for the enlarged marketing area. In those instances in which specific provisions of the amended order are substantively different from the Northeastern Ohio order, the justification therefor is set forth in the findings of this decision.

Definition of plants. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants substantially engaged in serving the fluid needs of the order market and those plants which do not serve the market in a way, or to a degree, that warrants their sharing (by being included in the market pool) in the market average utilization of Class I milk. Such distinction is necessary; otherwise, the proceeds of the higher Class I price would be dissipated by including in the market pool additional quantities of milk which were acquired by handlers primarily for manufacturing purposes. Such dissipated proceeds could accrue to the benefit of producers supplying milk to handlers who do not regularly or dependably furnish the fluid milk needs of consumers in the marketing area. Unless adequate standards of marketing performance are provided to determine which milk and plants will participate fully in the market pool funds, the uniform price of the market could be depressed to the point that it would not serve its function of attracting an adequate supply of milk for the fluid needs of the market without a Class I price higher than otherwise would be necessary.

Since Class I price increases are generally passed on to the public, such price increases necessitated solely because of inadequate performance standards for regulation would be contrary to the public interest. Therefore, in order to share in market pool funds, it is essential that plant operators perform marketing functions (i.e., deliver milk to market in specified amounts or proportions) which contribute to providing adequate and dependable market supplies. The marketing

performance standards are essential provisions of a milk order if it is to attain the statutory purpose of assuring adequate supplies of milk in the most economical manner and in a way that best serves the public interest. The marketing performance standards also minimize the effects of regulation on handlers who have only a minor proportion of their distribution in the regulated market. They do this by exempting such handlers from full regulation.

Any plant, wherever located, may become a pool plant if it meets the marketing performance standards for regulation which are equal for all plants performing the same function. The performance standards for regulation of a plant are an essential means of assuring the regulated market of adequate and dependable supplies of milk. It should be emphasized that these performance standards do not impede the shipment of milk to regulated markets. Quite the contrary. Because they require milk to be shipped to the market in order to share in the market pool funds, they encourage milk shipments for Class I use which otherwise might not be made. This incentive is achieved by preventing plants which do not ship milk in accordance with the prescribed standards from sharing in the pool fund. The performance standards are thus the opposite of a barrier to the shipment of milk to the market.

Because of the difference in marketing practices and functions between distributing plants and supply plants, separate performance standards have been provided for them.

A "distributing plant" would be defined as a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and which has some route disposition in the marketing area during the month.

To qualify as a pool plant, a distributing plant would be required to meet performance standards as to the proportion of its supply used in route disposition, including such disposition in the marketing area. Thus, pool distributing plants would include only those plants primarily engaged in the distribution of fluid milk products. The plant's total route disposition, both inside and outside the marketing area, should be at least 50 percent (40 percent monthly in April through August) of its receipts from all sources of fluid milk products that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk to a nonpool plant. The route disposition in the marketing area of such a plant should be at least 15 percent of its total receipts.

A plant from which Class I milk is distributed regularly in the marketing area may under normal circumstances be expected to dispose of its milk in such a way as to exceed by a reasonable margin the minimum performance standards necessary to qualify as a pool plant. At least three plants having some distribution in the proposed marketing area would not qualify for pool status under the proposed order or any other Federal order. Less than 15 percent of their receipts is disposed of as Class I in the marketing area; their major distribution is in areas that are unregulated by Federal orders. Also, there may be from time to time other plants supplying milk to the marketing area which would not qualify for pool status. Such plants should be required to file reports, make available their records for audit by the market administrator, and be subject to payment on terms hereinafter discussed if they are not fully subject to regulation under the order.

In their initial proposal, producers did not propose that a minimum percentage of a plant's receipts be disposed of in the marketing area to qualify a distributing plant for pooling. To qualify for pooling under that proposal, a plant with total route disposition of at least 50 percent (40 percent in some months) of its total receipts on routes both inside and outside the marketing area would qualify as a pool plant. This would enable a distributing plant having no association with the market to pool its total dairy farmer receipts by a token sale in the marketing area. At the hearing, however, producers took the position that a reasonable minimum in-area disposition requirement to qualify a distributing plant for pooling was necessary under current conditions in the proposed marketing area.

The operator of a plant outside the marketing area who has some distribution in the area proposed that the in-area Class I disposition of a distributing plant be at least 15 percent of its receipts to qualify it as a pool plant. This provision, which has been applicable and found to be appropriate in a number of orders, was supported by others at the hearing.

Essentially all, if not all, of the distributing plants that are pool plants under the Northeastern Ohio, Youngstown-Warren, and Wheeling orders have the preponderance of their route distribution in the Eastern Ohio-Western Pennsylvania marketing area. This is equally true with respect to the many distributing plants in Pennsylvania that would be regulated by the proposed order. The requirement that a distributing plant have 15 percent of its receipts disposed of in the marketing area would in no way change the status of these plants for pooling under the proposed order.

The principal purpose of a minimum in-area distribution requirement to qualify a distributing plant for pooling is to assure that it is associated with the market in a significant and regular manner. Otherwise, dairy farmers and handlers who ordinarily have no affiliation with the market could casually or incidentally associate themselves with the market when it was to their advantage to share unwarrantedly in the monthly Class I proceeds of the market. The pooling requirement that 15 percent of a plant's receipts be route disposition in the marketing area will not only provide a safeguard against such an exploitation of the pool but will also provide an appropriate measure of a plant's association with the market.

The in-area route disposition requirement for pooling would not restrict any milk plant operator from disposing of any fluid milk products in the marketing area. Any plant having more than a minor, or accidental, association with the fluid milk market could be eligible for pooling. On the other hand, the operator of any plant only marginally associated with a fluid milk market has a reasonable opportunity to make a choice of full or partial regulation, whichever might better serve his interest.

The requirement that a distributing plant's total route disposition be at least 50 percent (40 percent monthly in April–August) of its receipts to qualify for pooling is similar to that now provided in the Northeastern Ohio order and proposed by producers for the new order. These minimum percentages of a plant's receipts that must be disposed of on routes to qualify distributing plants for pooling have been satisfactory under the Northeastern Ohio order and, in conjunction with the minimum in-area sales requirement herein provided, should be equally appropriate under the conditions in the proposed marketing area. They are also similar to the comparable provisions in nearby orders. As such, they will facilitate the coordination in the marketing of milk from common supply areas.

The lower percentage requirement of route sales to qualify for pooling in the April–August period recognizes that some distributing plants handle reserve supplies of milk for the market during these months of seasonally high production and that sales to schools, which are closed in July and August, are a significant portion of the Class I sales from some plants. Requiring minimum route distribution from a plant of 40 percent instead of 50 percent of its receipts during these months will facilitate the handling of milk at such plants without endangering their pooling status or forcing them to drop producers.

Limited quantities (as provided in the attached order) of Class I milk may be sold within the regulated marketing area from plants not under any Federal order. There is, of course, no way to treat such unregulated milk uniformly with regulated milk other than to regulate it fully. Nevertheless, it is concluded that in present circumstances the application of "partial" regulation to plants having less association than required for marketwide pooling will not jeopardize marketing conditions within the regulated marketing area. Official notice was taken at the hearing of the Assistant Secretary's June 19, 1964, decision (29 F.R. 9002) supporting amendments to 76 orders, including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, in which the matter of partial regulation was discussed. That decision as it relates to an unregulated plant having some Class I distribution in the marketing area is appropriate under current conditions in the proposed marketing area and is adopted in its entirety.

The operator of any partially regulated plant would be afforded the options of: (1) Paying an amount equal to the difference between the Class I price and the uniform price with respect to all Class I sales made in the marketing area; (2) purchasing at the Class I price under any Federal order sufficient Class I milk to cover his limited disposition within the marketing area; or (3) paying his dairy farmers not less than the value of all their milk computed on the basis of the classification and pricing provisions of the order (the latter representing an amount equal to the order obligation for milk which is imposed on fully regulated handlers).

While all fluid milk sales of the partially regulated plant would not necessarily be priced on the same basis as fully regulated milk, the provisions described are, however, adequate under most circumstances to prevent sales of milk not fully regulated (pooled) from adversely affecting the operation of the order. They should be adopted in this order to complement the pooling requirements on fully regulated plants adopted herein.

"Supply plant" is the other plant category for which standards for pooling must be provided. A supply plant would be defined to mean a plant from which a fluid milk product acceptable to a duly constituted health authority is transferred or diverted during the month to a pool plant.

The proposed standards by which supply plants would qualify for pooling as presented at the hearing vary from as "liberal as possible" to as "tight as possible." The tightest shipping standards proposed would require a supply plant to ship at least 80 percent of its receipts to pool distributing plants to qualify as a pool plant in each month of July through February and 55 percent during the month to qualify in March–June. Under this proposal, a supply plant would be required to establish its qualification as a pool plant each month. No provision would be made for automatic pooling in months of heavy production on the basis of having qualified as a pool plant in specified preceding months.

The most liberal qualifying provisions would enable a plant to qualify as a pool plant in August–January on the basis of monthly shipments of 10 percent of its receipts. No shipments would be required for qualification in February–July if during the preceding August–January the plant had shipped at least 30 percent of its receipts during the total period and not less than 10 percent monthly. These requirements would be reduced further by enabling two or more supply plants to be considered as one plant for the purpose of determining their pool plant qualifications.

As proposed by major producer associations in the market, any supply plant could qualify as a pool plant in any month by shipping at least 50 percent of its receipts to pool distributing plants. However, a supply plant would be allowed to retain its pool plant status in the following February–August without making any shipments if it shipped during September–January at least 30 percent monthly and 50 percent for the entire period. After a plant had once qualified in this manner, it could continue to pool in the following September–January period with minimum shipments to pool plants of 30 percent monthly.

Under the Northeastern Ohio order, a supply plant may qualify for pooling in any individual month by shipping 30 percent of its receipts. A supply plant that had shipped 10 percent of its receipts monthly in August–January and 30 percent of its total receipts during that period to pool distributing plants would not be required to make any shipments in the following February–July to qualify as a pool plant in those months. In addition, once a plant had thus qualified it would be required to ship only 10 percent of its receipts monthly to a pool distributing plant in the following August–January to qualify for pooling in those months.

Under the Northeastern Ohio order, a plant operated by a cooperative may be designated a pool plant if during the immediately preceding 6 months at least half the milk of its producer-members was received at the pool plants of other handlers. That order also provides that two or more supply plants operated by the same handler may be considered as one plant in qualifying the plants for pooling.

Under the Youngstown-Warren order, a supply plant must ship at least 50 percent of its receipts to pool distributing plants to qualify for pooling in any individual month. A supply plant thus qualified for each month of September–January would be accorded pool plant status for the following February–August without being required to ship.

The Wheeling order requires monthly shipments of 55 percent of receipts to qualify a supply plant for pooling in an individual month and accords pool plant status in the following February–August to a plant that was a pool plant in September–January.

Pooling standards for supply plants should not be so high that they force uneconomic shipments of milk from supply plants to qualify such plants when such milk is not needed for Class I purposes in the market. At the same time, an appropriate minimum standard is needed to avoid the possibility that plants will refrain or refuse to supply the market when milk is needed for the Class I needs of consumers in the market.

It is inappropriate to include in the pool to receive the benefit of the uniform price those plants which are not a regular or dependable part of the market supply. Such plants, in which the principal operation is the utilization of milk in the manufacture of dairy products (which utilization returns to producers the Class II price), may be attracted to the pool only to participate in the higher valued Class I utilization of the fluid market without supplying the Class I fluid milk needs of consumers in the market.

A major function of the supply plant pooling standards is to insure that handlers who are processing milk and distributing it for sale primarily to consumers in the marketing area can regularly and dependably obtain milk from supply plants to meet their fluid milk requirements. Without such standards, supply plants would tend to keep milk at their plants for manufacture when it was to their advantage to do so.

To qualify for pool plant status, a supply plant should move to pool distributing plants a specified percentage of the milk (including that diverted from other plants) that is physically received at such plant from dairy farmers or from a cooperative in its capacity as a handler for farm tank milk. Disposition of such receipts to pool distributing plants should be at least 50 percent in each of the months of September, October, and November and 40 percent in other months. A plant meeting these qualifications is making a substantial contribution toward providing an adequate supply for the market and may reasonably be considered an integral part of the fluid milk supply for the market.

A supply plant from which a proportionately lesser quantity of milk than herein provided is moved to pool distributing plants, without otherwise having established a continuing association with the market, should not under present conditions be considered as contributing sufficiently to the market supply to share in pool funds.

Milk transferred from a supply plant to a pool distributing plant or producer milk diverted from a supply plant to a pool distributing plant should be considered as a shipment of milk from the supply plant to the pool distributing plant in determining the supply plant's pool plant status. In their exceptions to the recommended decision, producer associations and handlers emphasized that this practice has contributed to orderly marketing under the Northeastern Ohio order and that it would be equally appropriate in the proposed enlarged marketing area. Stating explicitly in the order that both transfers and diversions to pool distributing plants are qualifying shipments from a supply plant will contribute to the efficient movement of milk between pool plants and recognize a practice that has been customary in the market.

The demand for supply plant milk is less during the flush production months than during other months of the year. Requiring qualifying shipments to distributing plants during such flush production months would result in the uneconomical movement of milk. It is appropriate, therefore, that the shipping requirements in such months for a plant that has demonstrated an association with the market be less than in other months. It is thus provided that a supply plant that was a pool plant in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August irrespective of its shipments, unless the operator of such a plant elects nonpool status for the plant or the milk

received at the plant does not continue to meet the requirements of a duly constituted health authority.

Providing pool status to a plant in March through August on the basis of shipments in the preceding months will provide producer status for dairy farmers shipping to plants which are thus recognized as regular suppliers to the market. A plant should be permitted to withdraw from pool status, however, at the operator's option in any of the months of August through March in which it has not otherwise qualified as a pool plant. In such case, it would not acquire pool status until it again met a minimum shipping requirement.

The pooling standards for supply plants herein proposed are reasonable and appropriate under current conditions in the proposed marketing area. In conjunction with other provisions of the proposed order, they will enable the dairy farmers associated with qualified supply plants to keep their milk pooled under the order throughout the year and will insure orderly and stable marketing conditions.

A significant portion of the milk utilized at plants that would be pool distributing plants under the proposed order is received from supply plants. Of the 143 million pounds of producer milk pooled under the Northeastern Ohio order in 1966, 34.5 percent was received at regulated supply plants. There are no supply plants under the Youngstown-Warren and Wheeling orders. Although federally unregulated distributing plants that would be pooled by the proposed order receive milk from supply plants, the total quantity of milk received at such supply plants from dairy farmers was not available on the record.

The recent experience under the Northeastern Ohio order shows that supply plants are shipping increasing proportions of their dairy farmer receipts to pool distributing plants in the marketing area. The 11.6 million pounds of milk moved from pool supply plants under the Northeastern Ohio order to marketing area plants in 1962 was but 26 percent of their producer milk receipts. By comparison, in 1966 the 26.6 million pounds shipped was 55 percent of the producer receipts at regulated supply plants. The trend of supply plants shipping increasing proportions of their dairy farmer receipts to the marketing area is further indicated by the percentage of such shipments in the intervening years of 1963, 1964, and 1965 of 35, 45, and 54 percent, respectively.

In the 3 years of 1964, 1965, and 1966, the lowest monthly percentage shipments of producer receipts from Northeastern Ohio supply plants were in the months of March through August. These are the months, as herein proposed, during which a supply plant that had established an association with the market by qualifying as a pool plant in the immediately preceding 6 months, would not be required to make any shipments to pool. The lowest percentage of total shipments from supply plants to the marketing area in this 36-month period was 31 percent in the months of May and June 1964. Subsequent to July 1964, the percentage of shipments from regulated supply plants to the marketing area was not less than 40 percent in any month. The highest proportion of milk was shipped from supply plants to the marketing area in the months of September, October, and November, the months under the proposed order that a supply plant must ship at least 50 percent of its receipts to qualify. In 1966, shipments from Northeastern Ohio order supply plants to pool distributing plants were 62 percent of their producer receipts in September, 64 percent in October, and 65 percent in November.

Although the percentage shipments from regulated supply plants to the marketing area under the Northeastern Ohio order as cited above are based on the combined receipts and shipments of all plants, there is no indication that they are not representative of individual plants or that any supply plant whose dairy farmer deliveries are now pooled under the Northeastern Ohio order would be unable to meet the standards under the proposed order.

If they are an integral part of the Class I supply of the distributing plants, it may reasonably be expected that those federally unregulated supply plants now shipping to distributing plants that would be regulated by the proposed order would qualify as pool plants. If some such plants are only incidental or irregular sources of supply of fluid milk for marketing area plants, they should not be included in the marketwide pool. To do so would unwarrantedly dilute the pool returns to the producers on whom the market depends for an adequate and regular supply of Class I milk.

Any plant that was a pool plant under the Northeastern Ohio, Youngstown-Warren, or Wheeling order in any month after August 1967 until the effective date of the proposed order or any plant that would have been a pool plant under the proposed order (had it been in effect) in any month subsequent to August 1967 should be considered to have been a pool plant for such month for the purpose of determining its pool plant status. Such a provision is necessary to insure that all plants under the order would be accorded equitable treatment in qualifying as pool plants, irrespective of the effective date of the order. Should the proposed order become effective in March 1968, for example, a supply plant that was a pool plant under the Northeastern Ohio, Youngstown-Warren, or Wheeling order or would have been a pool plant under the proposed order (had it been in effect) in the preceding months of September through February would thereby qualify as a pool plant for the months of March through August 1968.

Elsewhere in this decision, a cooperative is accorded handler status with respect to milk of member-producers which it causes to be diverted to a nonpool plant for its account. Milk so diverted is deemed to have been received by the cooperative at the pool plant from which diverted. For the purpose of determining the pool status of a plant, milk so diverted (as well as milk diverted for the account of the plant operator) would be considered as a receipt from dairy farmers at such plant to the extent that it would not result in nonpool status for such plant. Otherwise, it would be possible for a cooperative to pool limitless quantities of milk that have no association with the market and that are intended for and used solely for manufacturing purposes at an unregulated plant.

The proposal to designate as a pool plant a plant that is within a specified area and is operated by a cooperative whose producer-members deliver at least two-thirds of their combined monthly production to pool plants of other handlers should be denied. This proposal, which was opposed by various producer associations and handlers would accord pool plant status to a specified plant and would otherwise have no application under the order. The witness for the cooperative proposing pool status for the plant stated that this plant could otherwise qualify as a pool plant and that the particular provision they proposed was presently unnecessary. A similar provision is now contained in the Northeastern Ohio order and has apparently performed a useful purpose in the past in enabling the cooperative plant to serve as a balancing plant for the market. Under current marketing conditions, however, the provision is not necessary or warranted under the proposed order.

The Northeastern Ohio order now exempts from the provisions of the order (except for reporting) any distributing plant located outside the marketing area that distributes in the marketing area not more than 300 points (one point being defined as one half-pint of cream or one quart of any other fluid milk product) of Class I milk per day on routes operated wholly or partly within the marketing area and is not otherwise qualified as a pool plant. Testimony at the hearing indicated that exempting this type of operation from the provisions of the proposed order is not desirable or justifiable under current marketing conditions.

It is not expected that this provision would result in exempting from the order any handler now operating in the proposed marketing area. The value this provision may have had in the Northeastern Ohio order in the past is not equally applicable under the proposed order, especially since the in-area sales standards for pooling in the proposed order are significantly different from those in Northeastern Ohio.

The Northeastern Ohio order now provides that a distributing plant be a pool plant in any month in which it has any route disposition in the marketing area. The 300-point exemption is complementary to the present pooling standard in that a distributing plant located outside the marketing area with only minor or irregular, or perhaps even accidental, sales in the marketing area would not be subject to full regulation. Such limited sales have not been considered sufficient to justify imposing the burden of full regulation on a plant that has so little association with the regulated market.

The proposed order provides that a distributing plant must have route disposition in the marketing area of at least 15 percent of its receipts to qualify for pooling. A plant with lesser in-area route disposition would not be subject to full regulation. In this circumstance, the 300-point exemption provision is unnecessary to relieve the plant from the burden of full regulation where only limited sales in the marketing area are involved.

In view of the above, the proposal to exempt a handler from the provisions of the order because of the location of his plant and/or a minimum route distribution in the marketing area should be denied.

The establishment of bulk tank units to form the basis for pooling and pricing milk should be denied. As proposed, a handler receiving milk from farmers in tank trucks would be permitted to designate one or more bulk tank units consisting of the production of one or more farmers as a "pool bulk tank unit" or a "nonpool bulk tank unit". A provision for bulk tank units is contained in the New York-New Jersey order but not in any other Federal milk order. It was not established that its use would have any value under the proposed order. Neither was it shown that there existed inadequacies or deficiencies in the type of pool plant provisions herein proposed that would be rectified by the adoption of a bulk tank unit provision in the Eastern Ohio-Western Pennsylvania order.

The proposal that a handler may qualify as pool plants a distributing plant and a supply plant by considering them as one plant and by meeting pooling standards for a distributing plant on the basis of their combined receipts and route distribution should be denied.

The standards by which distributing plants and supply plants may qualify for pooling are significantly different. A distributing plant, to obtain pool status, must have established its function as a distributing plant and an association with the market on the basis of its route distribution in the marketing area. A supply plant's requirements to pool are based solely on its shipments to pool distributing plants. A supply plant, whether or not affiliated or controlled by the operator of a distributing plant to which it ships, should appropriately establish its association with the market by its shipments to pool distributing plants.

Under the handler's proposal, pool plant status could be obtained by a supply plant solely because it was operated by, or under some control of, the operator of a pool distributing plant. Hence, such a supply plant, devoted exclusively to the utilization of milk for manufacturing purposes and/or having no association with the market, could be pooled under the order. This could have the effect not only of diluting the pool at the expense of producers regularly supplying the fluid market but also of impairing the maintenance of an adequate supply of milk for the market.

The same proposal would enable the combined operation of two or more distributing plants to be considered as one plant to qualify such plants as pool plants. The performance standards herein provided for distributing plants determine a plant's association with the market on the basis of the route distribution from that plant. To allow individual distributing plants to qualify as pool plants on the basis of a combined operation could result in pooling distributing plants that have no real association with the market. In effect, it would enable a distributing plant with a token distribution in the marketing area to be pooled under the order on the basis of an indicated affiliation with a pool distributing plant. It was not shown at the hearing that such a provision in the order was desirable or would contribute to orderly marketing. Moreover, such a proposal would tend to depreciate and be inconsistent with the minimum pooling standards for distributing plants provided in the attached order, which standards are found by this decision to be appropriate and necessary to effectuate the intent of the Act.

The proposal whereby a handler may qualify two or more supply plants as pool plants by considering the combined operation as one plant should be denied.

The principal argument advanced by proponents for incorporating such a pooling provision in the proposed order is that it is provided for in some orders. It was not established, however, that the basis on which such a provision was incorporated in such orders is applicable under the conditions in the proposed marketing area.

No testimony was presented to show that the proposed provision is necessary to qualify any supply plant that may reasonably be considered an integral part of the market supply of Class I milk. Neither was it shown that it would be to the benefit of producers regularly supplying the market. Proponents of the joint plant pooling, and the lower pool plant standards resulting therefrom, emphasized that they should be permitted to pool under the order the milk deemed necessary to maintain manufacturing operations considered by them to be incidental to or a part of their fluid milk business. Accordingly, a handler would be free to pool under the order the total dairy farmer receipts at a plant having no association with the fluid market and utilizing its total receipts for manufacturing purposes.

The pooling standards herein provided for supply plants is based on their performance in supplying Class I needs of the market. It is not the purpose of the order to include in the pool the milk received from dairy farmers at plants that are primarily engaged in manufacturing dairy products and that are not a part of the dependable supply of milk for the fluid market. The record evidence does not indicate that system pooling, under current conditions in the proposed marketing area, would contribute to orderly marketing or would otherwise tend to effectuate the intent of the Act.

Fluid milk products are distributed in the marketing area from plants that are fully subject to the classification and pricing provisions of other Federal milk orders. Full regulation under the proposed order should not be extended to such plants disposing of a major portion of their receipts in another regulated market. To do so would subject milk handled at such plants to duplicate regulation. The market administrator should, however, be apprised of the continuing status of such a plant. Accordingly, the operator thereof should submit to the market administrator reports of the total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

The operator of a plant from which milk is disposed of in this and another marketing area should be able to determine definitively and on a current basis the order under which the milk handled at his plant will be priced and pooled. A distributing plant that qualifies as a pool plant under this and another order in the same month should appropriately be pooled under this order if a greater volume of fluid milk products is disposed of from the plant in this marketing area on routes and to pool distributing plants than is so disposed of from such plant in the marketing area of the other order. This method of determining the status of a plant that qualifies as a pool plant under this and another order in the same month is reasonable and equitable and should be incorporated in the Eastern Ohio-Western Pennsylvania order.

Under some conditions, route disposition from a plant regulated by the New York-New Jersey Federal order outside the marketing area of that order or to a nonpool plant may be exempt from the pricing and pooling provisions of that order. The record does not indicate whether any fluid milk products from New York-New Jersey order plants are now disposed of on routes in the proposed marketing area or to handlers who would be regulated by the proposed order. The record does indicate, however, that milk is available from New York-New Jersey order plants to handlers under the proposed order.

In the event that milk is moved from a New York-New Jersey order plant without being subject to the pricing and pooling provisions of that order, it should be handled under the proposed order in the same manner as any other route disposition in the marketing area from an unregulated distributing plant or receipt of fluid milk products at a pool plant from an unregulated supply plant. Actually, such milk is in the same category as unpriced milk received from an unregulated plant and it would be inappropriate to handle in any manner different from milk received from an unregulated plant.

In view of the above, the order should provide, with respect to fluid milk products which are not priced and pooled pursuant to any order issued pursuant to the Act and which are disposed of from an other order plant on routes in the marketing area or to a pool plant, that

an other order plant would be considered a partially regulated distributing plant with respect to the route disposition and an unregulated supply plant for the deliveries to pool plants.

A definition of "nonpool plant" is provided to facilitate formulation of the various order provisions as they apply to such a plant. A nonpool plant would mean a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing, processing or bottling plant. Specific categories of nonpool plants would be defined as follows:

(1) "An other order plant" is a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant is qualified as a pool plant under this order and a greater volume of fluid milk products is disposed of from such plant in this marketing area as route dispositions and to pool distributing plants than is so disposed of from such plant in the marketing area regulated pursuant to such other order;

(2) "Producer-handler plant" is a plant operated by a producer-handler as defined in any order (including this order) issued pursuant to the Act;

(3) "Partially regulated distributing plant" is a nonpool plant that is a distributing plant and is not an other order plant or a producer-handler plant. A partially regulated distributing plant would also include an other order plant with respect to route dispositions from such plant in the Eastern Ohio-Western Pennsylvania marketing area which are not priced and pooled pursuant to any order issued pursuant to the Act; and

(4) "Unregulated supply plant" is a nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant. Unregulated supply plant would also include an other order plant with respect to fluid milk products which were received at a pool plant from such other order plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.

Handler. The primary impact of regulation under an order is on handlers. A handler definition is necessary to identify those individuals from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the definition includes (a) persons operating pool plants; (b) a person operating a partially regulated distributing plant; (c) a cooperative association with respect to producer milk diverted from a pool plant to a nonpool plant for its account; (d) a cooperative association with respect to its members' milk delivered in a tank truck under its control from the farm to a pool plant; (e) a person in his capacity as the operator of an other order plant; and (f) a producer-handler.

Designating as handlers the operators of the various types of plants that may be associated with the market is necessary so that the market administrator may require of them the reports to determine the regulatory status of the plants.

The principal cooperatives in the market assume the responsibility of balancing supplies among various handlers. Milk not needed for fluid uses generally can be most economically handled by diversion directly to manufacturing plants. To facilitate such handling, a cooperative is accorded handler status for milk which it causes to be diverted to nonpool plants for its account.

Requiring a cooperative to be a handler for milk delivered from the farm to a pool plant in a tank truck owned and operated by or under contract to the cooperative will afford a practicable basis of accounting for such milk. In addition, it will provide added flexibility to a cooperative's operations in allocating its members' milk among handlers and will facilitate the diversion of such milk to nonpool plants when it is not needed at regulated plants.

Once milk from a producer has been commingled with milk of other producers in a tank truck, there is no further opportunity to measure, sample, or reject the milk of any individual producer whose milk is included in the load. A similar situation prevails when the milk of an individual producer is delivered in a tank truck to two or more plants. The operator of a pool plant to which bulk tank milk is delivered has an opportunity to determine only the weight and butterfat test of the total load.

If a tank truck picking up milk at the farm is operated under the supervision of a cooperative association, it is the association that determines the weight and butterfat content of each producer's milk. Handlers have no control and generally take no part in determining the weight and butterfat tests of milk at the farm. In some instances, handlers may not even know from which farms their milk is shipped.

The milk delivered by the cooperative as a bulk tank handler would be considered as a receipt of producer milk by the operator of the pool plant at which it was physically received. The pool plant operator's obligation for such milk to the producer-settlement fund, to the administration fund and to the cooperative would be the same as for producer milk received directly from the farm of an individual producer.

In some instances, as discussed elsewhere in this decision, differences between the quantities of producer milk determined at the farm and ascertained as physically received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative at the location of the pool plant. For such differences the cooperative (instead of the pool plant operator) would be required to settle with the producer-settlement and administration funds.

Producer-handler. "Producer-handler" should be defined as any person who:

(a) Operates a dairy farm and a distributing plant and who received no fluid milk products from other dairy farmers or from sources other than pool plants; and

(b) Provides proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk.

The order is not intended to establish minimum prices for producer-handlers but they should be required to make reports to the market administrator. Such reports are necessary to determine whether the operator continues to meet the producer-handler definition.

The producer-handler definition herein provided was proposed by producers and is essentially the same as that contained in a number of orders, including the Youngstown-Warren order. The various handler proposals, however, would provide more restrictive qualifications than herein proposed, including provisions that a producer-handler (1) receive no fluid milk products from sources other than his own farm production, (2) distribute on routes not in excess of a specified average daily amount (e.g., 300 quarts), (3) purchase not in excess of a limited quantity of fluid milk products from pool plants and (4) sell no milk to other handlers.

The exemption of a producer-handler from the pricing and pooling provisions of the order should be limited to bona fide producer-handlers. It is appropriate, therefore, to provide that to maintain producer-handler status, the maintenance, care and management of the dairy animals and other resources necessary to produce milk and the processing, packaging and disposition of milk shall be the personal enterprise and risk of the person involved. The term producer-handler is not intended to include any person who does not accept responsibility and risk for the operation of the plant in which the milk of his own production is processed and packaged for sale.

A producer-handler is in a position to adjust his farm production closely to the needs of his fluid milk business. It was not established that exempting from the order the handlers with own farm production who qualify as producer-handlers would affect adversely the competitive position of regulated handlers. Those who proposed more restrictive qualifications for producer-handlers did not show that producer-handlers have an advantage in their Class I sales or are a disruptive factor in the market.

As herein proposed, a producer-handler would be required to handle his own surplus. Any milk disposed of by him to a regulated plant would necessarily be surplus to his operation. Accordingly, the milk received at a pool plant from a producer-handler would be classified and priced as Class II milk in computing the pool plant operator's obligation to the producer-settlement fund. In this manner, no advantage would accrue to the producer-handler or the pool plant operator at the expense of other regulated handlers and producers supplying the market.

A producer-handler should be permitted to purchase fluid milk products from pool plants but from no other source without losing his producer-handler

status. Such purchases should be classified as Class I. This will insure that any fluid milk products purchased by a producer-handler will not represent a lower priced source of supply, as might be the case if he were permitted to purchase fluid milk products from nonpool sources.

To permit producer-handlers to purchase fluid milk products from sources other than pool plants without becoming fully regulated would give them an unwarranted competitive advantage over other handlers in the market. This is so because they would be able to obtain the full value of their Class I sales for themselves without assuming the burden of their own surplus. However, as long as their Class I needs are obtained from their own production and from pool plants and they handle their own excess production, producer-handlers will not have any significant advantage over regulated handlers under present marketing conditions.

Producer. "Producer" should mean any person except a producer-handler as defined in this or any other order issued pursuant to the Act who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted to another plant under certain conditions. The producer definition will provide the necessary distinction between the production of those farmers whose milk will be priced and pooled each month under the order and the receipts at handlers' plants from all other sources.

"Producer" should not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another Federal order. Such a provision will contribute to orderly marketing by facilitating the movement of milk for manufacturing purposes from an other order plant to a pool plant.

Producer milk. "Producer milk" is intended to include all milk that is fully regulated by the order. Accordingly, it should be defined as all skim milk and butterfat contained in milk received at a pool plant directly from dairy farmers and milk diverted from a pool plant to other plants under certain conditions. As provided elsewhere in this decision, milk delivered by a cooperative as a bulk tank handler would be considered as a receipt of producer milk by the pool plant operator at the pool plant at which it was physically received.

When producer milk is not needed in the fluid market because of seasonal or day-to-day variations in demand, it may be more economical to deliver it directly to a nonpool plant for manufacturing instead of receiving it at a pool plant before transferring it to such manufacturing facilities. The testimony presented at the hearing emphasized the need for maintaining reasonable diversion provisions to accommodate the efficient handling of producer milk under the proposed order.

Under the Northeastern Ohio order, milk may be diverted to a nonpool plant without limit in April through July. In other months, at least 6 days' production of the producer must be delivered to a pool plant during the month to qualify his production for diversion during the remaining days of the month. Diversion between pool plants is allowed under the Northeastern Ohio order in any month if at least 6 days' production of the producer is delivered to the plant from which diverted during the month.

The Youngstown-Warren and Wheeling orders provide for unlimited diversions to nonpool plants in March through July. In other months, not more than 10 days' production of a producer may be diverted to a nonpool plant during the month. Unlimited diversions to other pool plants are allowed under the Wheeling order. The Youngstown-Warren order does not provide for such diversions.

Under all three orders, diverted milk is priced at the location of the plant from which diverted. None provides for diversions to other order plants.

The diversion provisions for the proposed order, as proposed by the principal producer associations in the market, would provide for unlimited diversions to nonpool plants in April through July, as now provided in the Northeastern Ohio order. For other months, they proposed that at least 15 days' production of a producer during the month be delivered to a pool plant to qualify any of his deliveries to nonpool plants as producer milk. They also proposed that diversions from a pool plant to another pool plant be permitted in all months, that diversions to other order plants be allowed under certain conditions, and that diverted milk be priced at the location of the plant from which diverted.

Except for pricing some milk at the plant to which diverted under certain conditions, the diversion provisions in the attached order are substantially those proposed by producers. They are appropriate under conditions in the Eastern Ohio-Western Pennsylvania market. The requirements herein adopted whereby the milk of a producer may be physically moved to another plant as diverted milk without losing its identity as producer milk are sufficient to establish a producer's association with the fluid market and at the same time permit the necessary flexibility in diverting milk not needed for fluid use.

The producer proposal that at least 15 days of the monthly production of a producer in August through March be delivered to a pool plant to qualify his deliveries to nonpool plants as producer milk is equitable and appropriate to the extent that it qualifies as producer milk diversions to nonpool plants equal to the quantities delivered to pool plants in the same month. It is inappropriate, however, as proposed by producers, to provide that no milk of a producer diverted to a nonpool plant in August through March may be considered as producer milk unless at least 15 days' production of the producer was delivered to pool plants in the same month. Such a provision is not necessary to insure the integrity of the regulation and would tend to work inequities on producers. The intent of the Act would more appropriately be effectuated by providing for August through March that a producer may divert to a nonpool plant as producer milk as much of his monthly production as was delivered to pool plants in the same month, irrespective of the number of days his milk was delivered to a pool plant. Such a qualification is reasonable, will be equitable to all producers, and will tend to insure that only the milk of dairy farmers having a bona fide association with the market would be eligible to be diverted as producer milk to nonpool plants.

Milk diverted to nonpool plants in excess of the limitations provided should not be considered producer milk. Hence, eligibility for pricing and pooling under the order would be forfeited on a quantity of milk equal to such excess. It would be the responsibility of the diverting handler to specify which milk is ineligible as producer milk. If the handler fails to make such designation and the market administrator is unable to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler would be ineligible as producer milk.

Unless it is diverted for manufacturing purposes, producer milk should not include any milk moved from a farm directly to an other order plant. Such milk's eligibility to be included under a Federal order would more appropriately be determined at the other order plant where received. In fact, diversion to such plants, if permitted unconditionally, could result in the pricing and pooling of the same milk under two orders.

Providing for the diversion of producer milk to an other order plant for manufacturing purposes will contribute to orderly marketing by facilitating the movement of milk for manufacturing from a pool plant to an other order plant. In some instances, a pool plant operator may find that his nearest outlet for unneeded supplies may be an other order plant. Specifying under the order that such milk may be diverted if a Class II classification is designated for such milk pursuant to the other order will tend to insure the integrity of the regulation under both orders.

Diversions to pool plants are to be distinguished from diversions to nonpool plants in that when milk is diverted to another pool plant there is no question as to whether the milk should be pooled. Substantial quantities of milk under the proposed order are diverted between pool plants. Providing for such diversions under the proposed order recognizes an established practice in the market that is helpful in obtaining the optimum utilization of producer milk.

Some proposals would price all or a portion of the milk diverted from a pool plant at the location of the plant where it is physically received. Otherwise, it was argued, an incentive would be provided to attach to the pool as diverted milk unneeded supplies of milk delivered to nonpool plants at distant locations from the market. Under this circumstance, the

producer milk thus diverted would have the advantage not only of receiving the f.o.b. marketing area price but also of the lower hauling cost incurred in moving the producer milk to the nonpool plant instead of to a pool plant in or nearer the marketing area.

Proponents of pricing diverted milk at the plant from which diverted emphasized primarily its administrative feasibility, especially since producers are accustomed to receiving payment for their milk based on the location of the plant to which it is usually delivered. They stated that confusion would be created among producers if a portion of their deliveries were paid for at prices applicable at other locations when such prices are different from the prices applicable at the location of the pool plant to which their milk is customarily delivered.

If permitted without any safeguards, pricing diverted milk at the location of the pool plant from which diverted could provide an incentive to pool unneeded supplies having no real association with the Class I market. This, it was argued, would make it possible to exploit the pool by diverting milk to manufacturing plants and thereby negate the incentive to make milk available for the market's Class I needs. Moreover, it could result in producers in the market paying (through the pool) a transportation cost to the market on milk which is not moved to the market and on which an equivalent transportation charge is not incurred.

The physical delivery to a pool plant during the month of at least half of the pooled milk of a producer is a reasonable standard to establish that producer's association with a pool plant. If less than half of a producer's deliveries during the month is delivered to a pool plant, it would be more appropriate to price the milk moved as diverted milk to another pool plant at the location of the plant at which it was physically received.

An equivalent standard would be equally appropriate for milk diverted to nonpool plants in August through March, when the quantity of milk of any producer diverted to nonpool plants as producer milk may not exceed that delivered to pool plants. Hence, during these months, the milk of a producer diverted to a nonpool plant would be priced at the location of the pool plant from which diverted. Similarly, in April through July, when milk of a producer may be diverted to nonpool plants without limit during the month, the quantity of milk of any producer diverted to nonpool plants equal to that physically received at pool plants would be priced at the location of the pool plant from which diverted. However, the quantity of milk of any producer diverted to nonpool plants that exceeds that physically received at pool plants would be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted.

The standards herein provided for determining the location for pricing producer milk is economically sound under present conditions in the proposed marketing area and will safeguard the purpose for which the diversion provisions are intended.

Other source milk. "Other source milk" should be defined in detail in the order to facilitate the application of the order to the various categories of receipts at a regulated plant.

Other source milk should include all skim milk and butterfat contained in or represented by (a) fluid milk products from any source (except producer milk, fluid milk products from pool plants, and fluid milk products in inventory at the beginning of the month), (b) all manufactured dairy products from any source (including those produced at the plant) which are reprocessed or converted into another product during the month, and (c) any disappearance of nonfluid milk products in a form in which they may be converted into Class I products and which are not otherwise accounted for under the order.

In order to verify the utilization of milk received from producers, it is necessary that the market administrator be in a position to reconcile all receipts of milk and dairy products with the disposition records of the plant. If such records cannot be reconciled, the handler must be held responsible for the shrinkage or the overrun which occurs as a result of the discrepancy between the records of receipts and disposition. Otherwise, the handler with improper records would be in a position to gain an advantage over his competitors who properly account for all milk and dairy products received. It is equally necessary that the handler be required to account for all nonfluid dairy products in a form in which they can be converted into Class I products. Otherwise, a handler, by failing to keep records of the nonfat dry milk and similar products which can be reconstituted into skim milk or other fluid milk products, would gain a competitive advantage over other handlers in the market.

Route disposition. The term "route disposition" would mean a delivery (except to a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine), of a fluid milk product classified as Class I.

Fluid milk products may be moved from a milk plant to a distribution facility such as a warehouse, loading station or storage plant. The distribution from such latter points would be considered a route disposition from the milk plant. To do otherwise would be inappropriate because it would consider the disposition of fluid milk products to have been made at the temporary storage facility instead of at the location at which such products are received by retail and wholesale purchasers.

Reload point. A "reload point" should be defined as a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering the plant. A reload operation on the premises of a plant, however, would be considered a part of the plant operations and not a reload point under the order.

Pricing producer milk at the location of a reload point was proposed by the major producer associations in the market. They claim that establishing the reload point as a point of pricing would reduce the incentive for handlers to move distant milk to the market at producers' expense for manufacturing use.

A number of handlers opposed pricing producer milk at the location of the reload point instead of at the pool plant where it is first received. Such reload point pricing, they claimed, could result in less opportunity for distant milk to compete for market outlets in the Eastern Ohio-Western Pennsylvania marketing area. They also argued that providing for reload point pricing under the proposed order is unnecessary since reload points are not a significant factor at this time.

If there are any reload points in operation under the proposed order, it was not established on the record. Neither was it indicated that an extensive utilization of reload points in the market is contemplated in the immediate future.

Any provision for reload point pricing in this market should take into account the actual or contemplated reload point operations in the market. Without such data, it cannot be concluded that there is sufficient need for differentiating the pricing of milk at reload points based on their location. The proposal, therefore, is denied.

(b) *Classification of milk.* Milk and milk products received by handlers should be classified on the basis of skim milk and butterfat according to the form in which, or the purpose for which, such skim milk and butterfat was used or disposed of as Class I or Class II milk.

Milk is received by handlers directly from dairy farmers, from other handlers, and from other sources. Milk from all these sources is commingled in handlers' plants. It is necessary, therefore, to have a plan for allocating the uses of milk to each source of supply in order to afford a means to establish the classification of producer milk and to apply the classified pricing plan.

The products included in Class I milk are required by health authorities in the proposed marketing area to be produced in compliance with the inspection requirements of a duly constituted health authority. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used in Class I products considerably above the manufacturing milk price. The higher price should be at a level which will yield a blend price to farmers that will encourage production of enough milk to meet market needs.

In accordance with these standards, Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk, cream (except sour cream), and mixtures of such cream or milk and skim milk. These Class I products would be

designated in the order as "fluid milk products". Class I, however, should not include any of the above products which are sterilized and in hermetically sealed glass or metal containers. Fluid milk products to which extra skim milk solids have been added or frozen or concentrated milk disposed of for fluid use likewise would be included as Class I milk. Any skim milk and butterfat not accounted for in Class II would be included in Class I.

Some nonfat milk solids are utilized through reconstitution or fortification in the preparation of Class I products distributed in the marketing area. For purposes of accounting for this skim milk required to produce the product, the added nonfat milk solids should include the normal quantity of water originally associated with the solids. The volume of the reconstituted or fortified product classified in Class I would be the quantity equal to the volume of the same product made without the addition of nonfat milk solids. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, should be classified as Class II.

As now provided in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, skim milk and butterfat unaccounted for in a Class II utilization by a handler must be classified in Class I. Such a provision is no less necessary in the proposed order to insure the integrity of the regulation. Otherwise, a handler could gain an advantage by not fully accounting for the disposition of the milk handled in his plant. In view of this, it is necessary that the utilizations at a plant which are included in the Class II category be explicitly set forth in the order.

Class II should be all skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated or condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, milk shake mix containing not less than 12 percent total milk solids and sterilized products in hermetically sealed glass or metal containers.

Sour cream is disposed of to consumers in various mixtures (e.g., "party snacks" or "dips"). The butterfat in such sour cream mixtures is usually below the minimum standard percentage for sour cream. Such products are not, however, generally considered in the fluid milk product category. It would be appropriate, therefore, that the skim milk and butterfat in fluid milk products combinded with sour cream, and otherwise used in the manufacture of sour cream products such as party snacks or dips, be classified in Class II.

The recommended decision provided a Class II classification for milk shake mix containing not less than 14 percent total milk solids. A handler exception cited the Pennsylvania statute prescribing that "milk shake" shall contain not less than 12 percent total milk solids (Pennsylvania Act No. 215, effective Sept. 1, 1965). The milk shake referred to in the Pennsylvania statute is apparently the same as the milk shake mix referred to in this decision. Specifying a Class II classification for milk shake mix containing not less than 12 percent total milk solids will insure the same classification throughout the marketing area for skim milk and butterfat used to produce milk shake mix.

Inventories of fluid milk products at the end of each month enter into the accounting for a handler's current receipts and utilization. To facilitate the accounting procedure, the month-end inventory of fluid milk products should be classified in Class II. They would, however, be subtracted, under the allocation procedures, from any available Class II in the following month. The higher use value of any such skim milk and butterfat allocated to Class I in the following month would be reflected in returns to producers.

Inventories would include only the skim milk and butterfat in bulk and packaged fluid milk products on hand at the end of the month. Since the disposition of skim milk and butterfat in nonfluid milk products has been accounted for when used to produce a manufactured dairy product (and classified as Class II milk), such skim milk and butterfat would not be included in inventories.

Inventories of fluid milk products on hand at a plant at the beginning of the first month in which the proposed order becomes effective or during any month in which a plant becomes regulated for the first time should be allocated to the available Class II utilization of the plant during the month. At plants that were fully regulated by an order in the immediately preceding month, this method of pricing will be consistent with that provided in the orders. At plants that were previously unregulated, the allocation of their unpriced milk on hand at the beginning of their first month under the order to the available Class II utilization would be consistent with the treatment accorded regulated handlers and would preserve the priority of assignment of current fluid milk receipts to current Class I utilization.

The proposed method of handling inventories, which is the same as that provided in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, is similarly provided for under the regulations of the Pennsylvania Milk Control Commission. Its inclusion in the proposed order was urged at the hearing and no testimony was presented in support of any other method of handling inventories.

Skim milk and butterfat in fluid milk products dumped or disposed of by a handler for livestock feed should be classified as Class II milk. Such outlets often represent the most efficient means of disposing of surplus skim milk. Transportation and handling costs are such that it is uneconomical to ship relatively small quantities of unneeded skim milk to trade outlets for surplus disposal. In the case of route returns of such products as homogenized milk and chocolate milk it is difficult or impracticable to salvage the butterfat for further use. Such butterfat which is not salvageable should be classified as Class II when dumped or disposed of for livestock feed.

It would not be practicable to permit in an unlimited manner the dumping of skim milk and butterfat by pool plant handlers. Neither would it be appropriate to classify such skim milk and butterfat for which no better outlet is available in other than Class II. Accordingly, the order should clearly specify a Class II classification for the skim milk and butterfat in fluid milk products dumped, provided that the market administrator is notified in advance and afforded the opportunity to verify the dumping.

Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of packaged food products for consumption off the premises should be classified in Class II. Such commercial food establishments usually can readily substitute concentrated milk products (e.g., condensed milk, butter, nonfat dry milk) in place of fluid milk products in their operations. To provide other than a Class II classification for the skim milk and butterfat in fluid milk products moved to commercial food establishments could result in losing for local producers these established outlets for Class II milk.

Some handlers proposed that fluid cream (for which a Class I classification is herein provided) be classified in Class II. In support of their position, they cited particularly the declining sales of fluid cream, which they attributed to pricing it in Class I. The decline in fluid cream sales in Northeastern Ohio and other order markets in recent years may be attributed to a number of factors besides price, however, including the demand for fluid milk products of lower butterfat content, the competition from other foods and the substitutes for fluid cream.

There is no apparent distinction between fluid cream and all other Class I products which must come from inspected sources. Producers are relied upon for the market's fluid cream requirements and they must incur the additional costs involved in the production of milk of acceptable quality for such product. If fluid cream were classified in Class II (instead of Class I) under the proposed order, it would tend to have the effect of dairy farmers subsidizing consumers who purchase this product or providing handlers an additional margin on producer milk utilized for such fluid cream sales. The handler proposal for classifying fluid cream in Class II is denied.

Frozen cream is most generally used to produce frozen desserts or other Class II products. Under some conditions, however, frozen cream may be ultimately disposed of as fresh fluid cream or used in the production of other Class I products such as flavored milk drinks. The classification of skim milk and butterfat used to produce frozen cream should,

therefore, be based on the actual disposition of such cream. Frozen cream placed in storage should be considered as a Class II classification in the same manner as any fluid milk product in a handler's inventory at the end of the month. Its Class II classification would be definitively established in any month in which it was used to produce a Class II product or qualified as a Class II transfer to another plant. Frozen cream that was not accounted for in a Class II disposition would necessarily be classified in Class I.

The health inspection requirements for milk used for sour cream manufacture vary within the proposed marketing area. Such products need not meet the same inspection requirements as milk for fluid consumption. There are substantial imports into the marketing area of sour cream and sour cream products from areas where milk used to produce sour cream is priced at a level approximating the Class II price under the proposed order.

Under these conditions, regulated handlers under the proposed order would be at a competitive disadvantage in competing for sales of these products in their principal sales areas. It would be inappropriate, therefore, under conditions in the proposed marketing area, to provide other than a Class II classification (as is now provided in the Northeastern Ohio order) for milk used to produce sour cream.

Under the Northeastern Ohio order, a Class II classification is provided for milk shake mix. This product, which is in the same category as ice cream mix, is not defined by statute in any of the States in the proposed marketing area. In proposing that milk shake mix be included in the Class II classification, handlers proposed that it be described more explicitly in the order. The statutory minimum of total milk solids in frozen dessert mixtures is 14 percent in Pennsylvania and somewhat higher in Ohio and West Virginia. It would be appropriate in specifying a Class II outlet for milk shake mix that it be a product of not less than 14 percent milk solids. Such a product containing a lesser quantity of milk solids would not, under the statutory standards in the marketing area, be a frozen dessert mixture and should be appropriately classified as Class I.

Waste and loss of skim milk and butterfat experienced in plant operations are referred to as "shrinkage". Since shrinkage represents disappearance of milk for which the handler must account but for which no direct return is realized, it should be considered as Class II milk to the extent that the amount is reasonable and is not the result of inadequate or faulty records.

The maximum shrinkage allowance in Class II at each pool plant should be 2 percent of producer milk, plus 1.5 percent of producer milk from a cooperative as a handler and bulk fluid milk products from other pool plants, and less 1.5 percent of bulk fluid milk products transferred or diverted to other plants. The 1.5 percent shrinkage allowance would be allowed on bulk fluid milk products received from other order plants and unregulated supply plants exclusive of the quantity of such receipts for which a Class II utilization is expressly requested by a handler.

The proposed 2 percent maximum shrinkage allowance of producer milk in Class II is substantially the same as provided in the Northwestern Ohio, Youngstown-Warren, Wheeling, and most other Federal orders. Its inclusion in the order was proposed by producers. A handler spokesman at the hearing urged a 3 percent maximum shrinkage allowance of producer milk in Class II for manufacturing operations. The basis for this request was the claim that manufacturing operations incur larger plant losses than other operations. No testimony was presented, however, of any specific experience of handlers under the proposed order to substantiate quantitatively the handler claim. Neither was it otherwise shown that conditions in the proposed marketing area justify a maximum shrinkage allowance in Class II that is 50 percent above that found to be reasonable and adequate in the Northeastern Ohio, Youngstown-Warren, Wheeling, and most other Federal order markets.

Plants which are operated in a reasonably efficient manner and for which acceptable records of receipts and utilization are maintained should not have plant losses in excess of the maximums provided. Any shrinkage in excess of the maximums should be classified as Class I milk. This is reasonable and necessary to strengthen the classified pricing plan and will tend to encourage the maintenance of adequate records and the efficient handling of milk.

The maximum shrinkage allowance in Class II herein provided is based on the experience of the pool plant at which the milk classified is received. If a handler operates more than one plant, he would compute his shrinkage allowance for each plant separately. To provide otherwise would establish different standards for single and multiple plant operators and accord an unwarranted advantage to the latter. Combining the receipts and utilization figures of two or more plants for determining shrinkage could have the effect of allowing a Class II classification for shrinkage in excess of the limits herein found to be appropriate. This is because the excess shrinkage at a plant (which is subject to a Class I classification) would be eligible to be classified in Class II if combined with the classification of another plant of a handler.

As provided elsewhere in this decision, a cooperative would be the handler for milk delivered from producers' farms to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative. When a cooperative is a handler under such conditions, the operator of a pool plant receiving this bulk tank milk directly from the farm would settle with the pool and the cooperative for such milk in the same manner as a receipt from producers. However, the full 2 percent allowance for shrinkage would be permitted the handler only if he is purchasing the milk on the basis of farm weights and has so notified the market administrator. Otherwise, the maximum Class II shrinkage allowed the handler on such milk would be 1.5 percent and the cooperative would be responsible for any difference between the gross weight of producer milk received in the tank truck at the farms and that delivered to pool plants. This procedure is followed in a number of Federal orders, including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders. It provides a reasonable basis for the allocation of the shrinkage allowance in those instances wherein the cooperative is the responsible handler with respect to milk picked up at producers' farms in bulk tank trucks.

In those instances in which a pool plant operator is not purchasing farm tank milk (from a cooperative as a handler) on the basis of farm weights, any difference between the quantities of producer milk determined at the farm and ascertained as physically received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative at the location of the pool plant. The cooperative would report such differences, which may reasonably be expected to be within 0.5 percent of the quantity of the producer milk determined on the basis of farm weights during the month, to the market administrator for inclusion in the monthly pool computation. Up to 0.5 percent of the producer farm tank milk involved would be reported in the pool as Class II; any such difference in excess of the maximum allowable Class II shrinkage of 0.5 percent would be Class I. The cooperative would be responsible for settling with the producer-settlement fund for the total quantity of shrinkage as reported. If the quantity of bulk tank milk physically received at a pool plant from a cooperative during the month is the same as the farm weights, the cooperative would have no settlement to make with the producer-settlement fund on such milk.

It is appropriate to limit the volume of unregulated supply plant milk and other order milk that may be classified in Class II as shrinkage since these types of receipts are allocated pro rata to class uses along with quantities received from pool plants and producers. Under the allocation system provided, such other source milk will share with producer milk in any shrinkage allocated to Class I when the specified Class II shrinkage limitations are exceeded. No specific shrinkage limit is necessary on unregulated or other order milk that does not share a pro rata assignment and thus is allocated first to Class II uses, since the allocation procedure insures assignment of such milk to Class II in an amount at least equal to the shrinkage that may be associated therewith.

To insure an equitable assignment of total shrinkage to the two categories of receipts (i.e., receipts for which there is a percentage limitation for Class II shrinkage assignment and receipts for

which there is no such limitation), the total shrinkage should be prorated to these two categories.

Skim milk and butterfat are not used in most products in the same proportions as contained in the milk received from farmers and, therefore, should be classified according to their separate uses. The skim milk and butterfat content of milk products received and disposed of by a handler can be determined through certain testing procedures. Some products such as ice cream and condensed products present a difficult problem of testing in that some of the water contained in the milk has been removed. It is desirable in the case of such products to provide an appropriate means of ascertaining the amount of skim milk and butterfat used to produce such products. The accounting procedure to be used in the case of concentrated milk products, such as condensed milk or nonfat dry milk, should be based on the pounds of milk or skim milk required to produce such product.

Skim milk and butterfat used to produce Class II products should be considered to be disposed of when the Class II product is produced. Handlers will need to maintain stock records on such products, however, to permit audit of their utilization records by the market administrator so that verification of such Class II uses may be made. If a handler fails to keep the necessary records for verification purposes, the skim milk and butterfat will be reclassified as Class I milk.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. A handler who first receives milk from dairy farmers should be held responsible for establishing the classification of and making payment for such milk. Fixing responsibilities in this manner is necessary to effectively administer the provisions of the order.

Except for the quantities of shrinkage that may be classified in Class II, all skim milk and butterfat for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage that might accrue to handlers who fail to keep complete and accurate records and to assure that dairy farmers receive payment for their milk on the basis of its use. Accordingly, the burden of proof should be on the handler to establish the utilization of any milk as other than Class I.

Transfers. The transfer provisions in the attached order, which were proposed by producers, are basically the same as those in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders with but one exception. Under these orders, milk or skim milk moved from a pool plant to a nonpool plant may be classified as Class II if transferred or diverted to a nonpool plant within a specified distance from a designated location in the marketing area (e.g., 265 miles from Cleveland in the Northeastern Ohio order). Transfers or diversions of milk and skim milk to nonpool plants beyond the specified distances are classified as Class I.

Producers proposed that milk and skim milk transferred or diverted to nonpool plants be eligible for a Class II classification irrespective of the location of the nonpool plant. Although there may have been some justification in the past under the existing orders to specify a Class I classification for transfers and diversions to nonpool plants beyond a specified distance from a marketing area location, there is no need under current marketing conditions for such a limitation under the proposed order. On the contrary, such a limitation would tend to impede rather than facilitate the marketing of unneeded supplies of producer milk.

With the removal of the mileage limitation, the transfer provisions in the attached order, which have been appropriate in achieving the ends sought by regulation under the existing orders, should be equally satisfactory in achieving these ends under the proposed order.

Allocation. The system of allocating handlers' receipts to the various classes should be similar to that adopted in the Assistant Secretary's June 19, 1964, decision for 76 milk orders (including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders) for integrating into the regulatory plan of each of the orders milk which is not subject to classified pricing under any order and receipts at a pool plant from other order plants. That decision provides a procedure for allocating over a handler's total utilization his receipts from all nonpool sources and for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Inasmuch as the aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders generally, it is appropriate and necessary that the same system of allocation be included in this order. Likewise, the treatment of other order milk received at pool plants should conform with the plan included in that decision so as to coordinate the applicable regulations on all movements of milk between Federal order markets. Producers and handlers recognized the necessity for such coordination and proposed allocation provisions that would be basically unchanged from those now provided in the Northeastern Ohio order.

The findings and conclusions of the June 19, 1964, decision (29 F.R. 9002) as they relate to a handler's receipts from all nonpool sources are equally applicable under current conditions in the proposed marketing area and are adopted in their entirety.

(c) *Class prices—Class I price.* The Class I price must be established at a level which, in conjunction with the other class prices, will result in returns to producers high enough to maintain an adequate, but not excessive, supply of quality milk to meet the requirements of consumers, including the necessary market reserves. In addition, it is important that the Class I price not be at a level which exceeds the cost of obtaining milk of acceptable quality and regular availability from alternative sources. Such a price will, of course, be in alignment with those prevailing in nearby Federal order markets.

The Class I price proposals considered at the hearing follow closely the Class I price provisions of the Northeastern Ohio order. In that order, the Class I price is determined by adding a differential of $1.67 to the basic formula price (Minnesota-Wisconsin price series) for the preceding month and adding or subtracting a supply-demand adjustment of not more than 25 cents that is based on the relationship of producer deliveries to handlers' Class I sales. The order also provides that in determining the Class I price through April 1968, the basic formula price shall be not less than $4.05 and the Class I differential shall be $1.87 instead of $1.67.

The Youngstown-Warren Class I price is determined by adding 10 cents to the Northeastern Ohio Class I price.

The Wheeling order Class I price is the basic formula price (Minnesota-Wisconsin series) for the preceding month plus $1.73, subject to a supply-demand adjustment that may not differ by more than 15 cents from the Northeastern Ohio supply-demand adjustor for the preceding month. Through April 1968, the applicable basic formula price may not be less than $4.05 and the Class I differential is $1.93 instead of $1.73.

Official notice is taken of the findings in the April 25, 1967, decision (32 F.R. 6501) supporting amendments to various orders, including Northeastern Ohio and Wheeling, which became effective May 1, 1967 (32 F.R. 6606). These amendments provide that in determining the Class I price through April 1968, the basic formula will be not less than $4.05 and the average annual Class I differentials will be increased 20 cents. The amendments also provide for replacing seasonal Class I differentials in Northeastern Ohio (and other orders) with a single monthly differential equal to the annual average of the seasonal differentials. Prior to May 1, 1967, the Northeastern Ohio Class I price differentials were $1.40 in April through July and $1.80 in the other months.

The Class I prices in the Youngstown-Warren and Wheeling markets have been at about the same level. During the period 1963–66, the Wheeling Class I price averaged $4.92; the Youngstown-Warren price averaged $4.93. In most of these years, the Wheeling price exceeded the Youngstown-Warren price by from 3 to 7 cents per hundredweight. However, in 1966, the Wheeling price was about 17 cents less than the Youngstown-Warren price.

There is no indication that the pricing provisions of the Northeastern Ohio, Youngstown-Warren, and Wheeling orders are not obtaining an adequate supply of milk for the market, or that basically these price provisions will be inappropriate under the proposed amended order. Of the 2.112 billion pounds of producer milk pooled under the three orders in 1966, 70 percent was Class I.

The Class I price level proposed for milk received at plants in the Pittsburgh area ranged from the same as to 25

cents above the Class I price that would be applicable in the Cleveland area. The proposal for the same Class I price in the Cleveland and Pittsburgh areas would also provide for the same Class I price throughout the entire marketing area. Various witnesses emphasized that the Class I price in the Pittsburgh area should be equivalent to the Cleveland area Class I price plus the cost of moving milk between the two locations.

The actual prices paid by Western Pennsylvania handlers (except the several presently subject to Federal orders) for all milk disposed of in the Class I category is not clearly established on the record. This is because a substantial portion of their aggregate Class I disposition is not subject to prescribed minimum prices. As previously indicated, the Pennsylvania Milk Control Commission (PMCC) fixes minimum prices that Pennsylvania handlers purchasing milk from producers must pay for such milk received at their plants in Pennsylvania. Such handlers, however, are not required by PMCC to pay any prescribed price for milk received from outside the State. Substantial quantities of milk are received by Pennsylvania handlers from producers and country plants outside Pennsylvania.

In 1966, Pittsburgh area (PMCC Area 2) fluid milk dealers received 883 million pounds of milk from producers either at their plants in Pennsylvania or at country receiving stations in the State. In addition, they received the same year 225 million pounds of milk from out-of-State sources. The quantity of milk handled by fluid milk dealers in the Erie marketing area (PMCC Area 7) is significantly less than that handled by those in the Pittsburgh area. Data for 1966 were not available for the Erie area. For 1965, of the 186 million pounds of milk received by fluid milk dealers in the Erie area, 14 million were from out-of-State sources.

The PMCC Class I price for Area 2 (Pittsburgh) has historically been about 11 cents higher than the Area 7 (Erie) price. Except for some abnormal variations in 1964 and 1965, the PMCC Pittsburgh area Class I price for the period 1961 through 1966 averaged 11 cents above the Erie area price. (From August 1964 through July 1965, the PMCC Pittsburgh Class I price was reduced substantially but the Erie Class I price was not. During this period, consequently, an atypical relationship existed between the Class I prices for the two areas.) In addition, for the period January through September 1967, the Pittsburgh price likewise averaged 11 cents above the Erie price. (Official notice is here taken of the PMCC monthly Class I price announcements for Areas 2 and 7 for January 1961 to date.)

The PMCC orders provide for a lower Class I price applicable to milk sold by a handler outside his area. These prices in 1966 ranged monthly from 10 to 20 cents below the stated Class I prices in the Pittsburgh and Erie areas. In addition, handlers who comply with certain conditions may pay their producers on an "optional" basis. Under the optional purchase plan, the prescribed minimum prices that a handler must pay his producers are about 10 cents below the stated Class I prices.

Of the 883 million pounds of milk received by Area 2 fluid milk plants by direct delivery from producers and from receiving stations in Pennsylvania, 542 million or 61 percent was classified as Class I. These Class I sales are apparently subject to PMCC's Class I pricing provisions. The remainder of the receipts at these plants, the 225 million pounds from out-of-State sources, are not priced by PMCC.

Since a Pittsburgh based handler may obtain all or a part of his milk from sources in or outside the State, the PMCC Class I prices often have limited applicability. They have no applicability to a handler who receives all his milk from sources outside the State. To a handler who receives his supply from sources both inside and outside the State, the proportion in which his in-State and out-of-State supplies are allocated to his Class I uses actually determines his Class I costs. The PMCC Class I price may have little, or not any, effect in determining a price applicable to his total Class I disposition. This situation is equally as true in the Erie portion of the proposed marketing area as well as in the Pittsburgh area.

The extent to which Pennsylvania milk, to which the PMCC Class I price is applicable, is allocated to Class I vis-a-vis milk received from out-of-State sources is indicated by the relative utilizations of milk in these categories for 1965 (complete 1966 data were not available on the record). Of the 1.294 billion pounds of milk received from all sources by 107 Area 2 fluid milk dealers in 1965, 63 percent was classified in Class I. Included in that total were 167 million pounds of milk received from out-of-State sources, 91 percent of which was classified as Class I.

It is apparent that Area 2 handlers receiving milk from out-of-State receiving stations are able to obtain such milk at prices lower than they would be required to pay for milk received from producers in Pennsylvania. For 31.6 million pounds of milk received from out-of-State receiving stations in 1965, Area 2 handlers paid $198,000 less than the PMCC's minimum prices, an average of 63 cents per hundredweight of milk.

Except for the proposal for the same Class I price at all locations in the proposed marketing area, there was no testimony at the hearing in support of a lower Class I price level at plants in the present Youngstown-Warren and Wheeling marketing areas relative to the Class I price that is now applicable in the Northeastern Ohio marketing area. Instead, it was urged that the present relationship of Class I prices that now exists for milk received at plants located in these various marketing areas be retained. Those proposing the same Class I price throughout the marketing area tended to overlook the historic relationship of prices at the various locations, which prices had been deemed appropriate to obtain adequate supplies of milk from producers at plants in these areas. It was not shown that the conditions that would prevail under an order as proposed would justify a reduction in the Class I price for producer milk delivered to plants now subject to the Youngstown-Warren and Wheeling orders.

Accordingly, the price in the Youngstown - Warren - Steubenville - Wheeling area (essentially the territory covered by the previous Youngstown-Warren and Wheeling marketing areas) should be established at 10 cents per hundredweight over the Cleveland Class I price. This will maintain the historical relationship between the Youngstown-Warren and Wheeling prices and also the historical relationship between the Cleveland price on the one hand and the Youngstown-Warren and Wheeling prices on the other.

The price in the Pittsburgh area should also be established at the same level as that for Youngstown-Warren and Wheeling and 10 cents higher than for Cleveland. The principal distribution in the Pennsylvania portion of the proposed marketing area is from plants in Allegheny County, the county in which Pittsburgh is located. Milk is received at plants in the Pittsburgh area from dairy farmers as much as 150 miles away. Since the production areas from which Pittsburgh area handlers receive their supplies overlap substantially the production areas for the Youngstown-Warren and Wheeling markets, Pittsburgh handlers would be disadvantaged under the proposed order in maintaining a supply of milk at Class I prices lower than for milk delivered to regulated plants at Youngstown and Wheeling. On the other hand, there is no justification for establishing a higher Class I price for milk delivered to plants in the Pittsburgh area than for milk delivered to the Youngstown-Warren and Wheeling areas. This is because there is no indication that the comparable Class I prices paid by Pittsburgh handlers for their total Class I utilization are even as much as the Youngstown-Warren and Wheeling order Class I prices.

Providing for the same Class I price in the Pittsburgh area as in the Youngstown-Warren and Wheeling areas would also tend to insure an appropriate relationship of the Class I prices between the Cleveland and Pittsburgh areas. The PMCC Class I price for the Pittsburgh area of $5.73 for 1966 is not the actual average price paid for all Class I milk disposed of from Pittsburgh area fluid milk plants. The $5.73 price and its equivalent in other specified periods were the prices emphasized at the hearing by the various proponents for a higher Class I price in the Pittsburgh area than at other locations in the proposed marketing area. What portion of the Class I milk disposed of from Pittsburgh area fluid milk plants is paid for at the various PMCC Class I prices was not established on the record. The record does state, however, that milk received from out-of-State sources and not subject to the PMCC prices was paid for at less than the PMCC prices.

The cited PMCC prices as a basis for a Class I price that should be applicable under the proposed order would need to be further reduced since Class I milk as defined by PMCC and under the proposed order, although similar, are not the same. A greater quantity of the milk disposed of by Western Pennsylvania handlers would be classified as Class I under the proposed order than under PMCC regulations. For example, cream which is Class I under the Northeastern Ohio, Youngstown-Warren and Wheeling orders, as well as under the proposed order, is Class II under the PMCC regulations. Because of the differences between Class I classification under the proposed order and the PMCC regulations, it may reasonably be concluded that the actual Class I price that is now obtaining an adequate supply of milk for the Pittsburgh area is nearer that provided in the Youngstown-Warren and Wheeling orders than is the stated PMCC Class I price. This is because the latter price is pricing only a part of the Class I disposition of Pittsburgh fluid milk dealers.

The Class I price under the proposed order for milk received at plants in the presently designated Youngstown-Warren and Wheeling marketing areas and at Pittsburgh area plants should be established 10 cents above the Class I price for milk received at other locations in the marketing area. To effectuate this, the territory in the marketing area within 80 miles (by the shortest highway distance as determined by the market administrator) of the Pittsburgh City Hall would be designated the "Pittsburgh district". The remainder of the marketing area would be designated the "Cleveland-Erie district".

Included within the Pittsburgh district would be the presently regulated Youngstown-Warren and Wheeling order plants and all but several plants in the PMCC Pittsburgh milk marketing area. In the remaining portion of the marketing area provided by this decision are principally those plants whose milk is now priced by the Northeastern Ohio order, plants now included in the Erie marketing area and a plant in Ohio that would become regulated for the first time under a Federal order.

The several plants in the present Pittsburgh milk marketing area that would not be included in the proposed Pittsburgh district are those which are more closely associated competitively with handlers at other locations in the proposed marketing area in both procurement and sales than with Pittsburgh area handlers. Typical of these are the handlers in the vicinity of Meadville, Pa., which is but 37 miles from Erie and 95 miles from Pittsburgh. The handlers whose plants are in the proposed Pittsburgh district are those whose principal distribution is within the major cities of the present Pittsburgh marketing area and the Wheeling and Youngstown areas. There is substantial competition among these handlers in both procurement and in sales.

There is no basis for establishing a price level in the Erie area above that provided presently and now proposed for the territory in the Northeastern Ohio marketing area. Likewise, it would be inappropriate to provide for a Class I price level in the Erie area equal to that provided for the Pittsburgh district. To do this would remove the incentive for the many producers in and near Erie County, who ship to Pittsburgh handlers, to continue to make such shipments. Presently, substantial quantities of milk are shipped from the Erie area to Pittsburgh district handlers. A Pittsburgh district Class I price that is 10 cents above that at Erie plants recognizes the historical relationship of prices at these locations and will insure that milk from the farms in the Erie area now supplying Pittsburgh district plants will continue to ship needed supplies to Pittsburgh.

Two plant operators whose plants are between 70–80 miles from Pittsburgh urged in their exceptions that the Pittsburgh district be redefined to exclude their plants from it. The change requested by them would result in the Cleveland-Erie district Class I and uniform prices (instead of those for the Pittsburgh district) being applicable to milk received from producers at their plants. As herein provided, the Cleveland-Erie district Class I and uniform prices are 10 cents per hundredweight less than those for the Pittsburgh district.

One of the plants referred to above is currently, and has been for a number of years, a pool plant under the Youngstown-Warren order. The Class I price under that order is the same as provided in this decision for the Pittsburgh district. Regulation of this plant under the Youngstown-Warren order indicates that a substantial proportion of its Class I sales is in the present Youngstown-Warren marketing area in competition with handlers regulated by that order. If this plant were excluded from the Pittsburgh district (with a resultant lower Class I price), it would arbitrarily be provided with an advantage over its principal competitors.

As indicated elsewhere in this discussion, there was no testimony at the hearing in support of a lower Class I price at plants in the Youngstown-Warren area relative to the Class I price that is now applicable to Northeastern Ohio pool plants. It was urged that the present 10-cent difference in Class I prices that now exists for milk received at plants in these various marketing areas be retained. It was not shown that a reduction in the Class I price for producer milk delivered to plants now subject to the Youngstown-Warren order as requested by the operator of this plant was justified.

The second plant, for which exclusion from the Pittsburgh district was requested, is in PMCC Area 2 (Pittsburgh). As indicated elsewhere in this discussion, the PMCC Class I price for Area 2 has historically been about 11 cents higher than the PMCC Area 7 (Erie) price. This historical price relationship is recognized by this decision. To revise the Pittsburgh district as urged by this handler would have the effect of reducing his Class I price by 10 cents relative to that paid by his principal competitors.

In view of the above, it would be inappropriate to establish a Pittsburgh district, as proposed by the two exceptors, that would permit them to pay a lower Class I price for producer milk than their principal competitors are required to pay.

The Class I price under the proposed order for milk received at plants in the Cleveland-Erie district would be the same as that now provided in the Northeastern Ohio order, i.e., adding $1.67 to the basic formula price (Minnesota-Wisconsin price series) for the preceding month and adding or subtracting a supply-demand adjustment of not more than 25 cents. In addition, in computing the Class I price through April 1968 the basic formula used would be not less than $4.05 and the Class I differential would be $1.87 instead of $1.67. The April 25, 1967, decision (32 F.R. 6501), which provides for the latter in a number of orders, including Northeastern Ohio and Wheeling, is adopted in its entirety with respect to justification for a basic formula of not less than $4.05 and a Class I differential of $1.87 through April 1968. The findings set forth in that decision are equally appropriate under current conditions in the proposed marketing area.

The April 25, 1967, decision also provides for the removal of seasonal pricing in the various orders, including the Northeastern Ohio order. The conclusion in that decision that removal of seasonal pricing would contribute substantially to price alignment among all markets is equally applicable under current conditions in the proposed marketing area.

The Class I price for milk received at plants in the Pittsburgh district would be determined by adding 10 cents to the Cleveland-Erie district Class I price. At plants outside the marketing area the Class I price would be the same as the Class I price applicable at the nearest of several designated cities in the marketing area. For this purpose, Cleveland and Canton, Ohio, and Pittsburgh, Erie, and Uniontown, Pa., would be appropriate locations from which to make such determinations. It is reasonable to expect, for example, that competition in procurement and/or sales of a plant that is nearer the Cleveland-Erie district than to the Pittsburgh district would be with handlers in the Cleveland-Erie district than with Pittsburgh district handlers.

Until production and sales data under the proposed order have been accumulated for a reasonable period of time, the same supply-demand provisions now in the Northeastern Ohio order should be retained. They are the most suitable means currently available for measuring the supply of milk available for the market relative to its needs. There is no indication that the overall utilization of milk received from dairy farmers at plants which are presently federally unregulated and which would be subject to the proposed order are substantially different from the utilization at the presently regulated Federal order plants.

In 1966, of the 2.112 billion pounds of milk received from dairy farmers at plants subject to regulation under the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, 70 percent was Class I. The most recent comparable utilization data available for the Pittsburgh marketing area is for the 12 months ending November 30, 1966. In that period, 68 percent of the 1.26 billion pounds of milk received by fluid milk dealers in the Pittsburgh milk marketing area was designated Class I by PMCC. For the Erie marketing area, the year 1965 is the most recent 12 months for which comparable data are available. In that year, 71 percent of the 173 million pounds of milk received from Pennsylvania producers was PMCC Class I. No information was available on the record of the utilization of 14 million pounds of milk received in 1965 by Erie area handlers from out-of-State sources.

Since the Class I utilization percentage of the aggregate producer deliveries to plants that would be regulated under the proposed order approximates that under the present Northeastern Ohio order, the present supply-demand provisions of the Northeastern Ohio order should be appropriate under the proposed order for the limited period herein provided. (Elsewhere in this decision, it is found that the Eastern Ohio-Western Pennsylvania Class I price, including the supply-demand provisions, should be effective only for the first 18 months of the order.) It is also appropriate that the supply-demand provisions under the proposed order be computed on the basis of producer receipts and Class I sales of all regulated plants instead of being limited to plants now subject to the Northeastern Ohio order. Using only supplies and sales of presently regulated Northeastern Ohio plants in computing the supply-demand adjustment for the enlarged order could tend to incorrectly reflect the actual supply-demand conditions for the whole market. There is no assurance, for example, that all plants now regulated under the Northeastern Ohio order will be continuously in operation in the first 18 months of the new order or that some plants now regulated will become nonpool plants in that period. On the other hand, the effect on the supply-demand adjustment of some plants discontinuing their association with the market would be minimized under the proposed order since consideration would be given to the receipts and sales of plants coming on the market for the first time as well as those which have discontinued their operations or have become nonpool plants.

It is proposed that the Eastern Ohio-Western Pennsylvania Class I price be effective only for the first 18 months in which the order is in effect. It is appropriate that the Class I price structure be reexamined at a public hearing after the accumulation of at least 1 year's data on milk supplies and sales. At that time, sufficient experience under the new order would be available to determine whether the Class I price level herein proposed should be changed. Also, sufficient data would then be available to determine whether any changes in the supply-demand provisions should be made.

Class II price. The Class II price should be the same as the Northeastern Ohio order Class II price: the basic formula price (Minnesota-Wisconsin price series) for the month or a butter-powder formula price plus 10 cents, whichever is lower. In 1966, when the Northeastern Ohio Class II price averaged $3.76, the Minnesota-Wisconsin price was the Class II price in only 1 month. In that year, the Minnesota-Wisconsin price series averaged $3.92 and the butter-powder formula price, $3.66.

The Class II price herein provided was proposed by the principal producer associations in the market and was supported by some handlers. It is used not only in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders in establishing a Class II price, but also in a number of other Federal orders, including the nearby Northwestern Ohio, Columbus, Cincinnati, Miami Valley, and Clarksburg orders.

In the Pennsylvania portion of the proposed marketing area, milk received by fluid milk dealers from Pennsylvania producers is now subject to PMCC prices. The PMCC Class II price, which is the higher of the Minnesota-Wisconsin price or a butter-powder formula price, averaged $3.94 in 1966. The PMCC "Sub-class II" price, which is its butter-powder formula price, averaged $3.65 in 1966. Sub-class II includes milk used in the manufacture of cheese (except cottage cheese), butter and nonfat dry milk. The PMCC Class II includes other Class II dispositions (as provided in the proposed order) and dispositions such as fluid cream and mixtures of milk and cream, which are Class I in the proposed order. Of the 1.26 billion pounds of milk handled by Pittsburgh area fluid milk dealers in the year ending November 30, 1966, 27 percent was classified in Class II and 6 percent in Sub-class II by PMCC.

Two producer associations (neither of which maintains manufacturing operations or is extensively involved in marketing Class II milk) proposed as a Class II price the higher of the Minnesota-Wisconsin price or the present butter-powder formula price. For 1966, such price would have averaged $3.92, 16 cents above the Class II price provided by this decision.

A handler urged that the Class II price be the lower of the Northeastern Ohio order butter-powder formula price or the U.S. manufacturing milk price series used in the Federal order markets in the northeast. The average 1966 Class II (Class III in the New York-New Jersey order) price in these northeastern orders was $3.84 for New York-New Jersey and Massachusetts-Rhode Island, $3.89 for Connecticut, $3.92 for Delaware Valley, and $3.86 for Washington and Upper Chesapeake Bay. The handlers' proposed butter-powder formula price, which would have been the effective Class II price in every 1966 month, averaged $3.66, 18 to 26 cents below the northeastern order Class II prices and 10 cents below the Class II price provided by this decision.

The Class II price level in the northeastern Federal orders using the U.S. manufacturing milk price series is higher than that herein proposed. The handler spokesman stated that the U.S. manufacturing price series as a basis for determining the Class II price under the proposed order is more appropriate (because it is used in six northeastern orders) than any Midwest pay price, such as the Minnesota-Wisconsin price. He did not, however, explain why the butter-powder formula price proposed by him as an alternative Class II price (and not so utilized in any northeastern Federal order) should be included in the proposed order.

The principal argument of the handlers proposing the lower Class II price is that Pennsylvania is one of the leading States in ice cream manufacture, and Pennsylvania ice cream manufacturers must compete for sales outside the State with handlers who have lower raw material costs. This, according to handlers, is because the milk and milk products used in the manufacture of ice cream in Pittsburgh and other parts of Western Pennsylvania must be approved by a duly constituted health authority, in the same manner as milk for Class I purposes. The out-of-State handlers with whom they compete, handlers claim, may use milk and milk products from uninspected sources and are able thereby to utilize imported butterfat, presumably obtainable at a relatively low price, in their ice cream manufacturing operations.

The purpose of an order is to insure an adequate supply of pure and wholesome milk for the market's Class I needs. Since the quantities of producer milk required on different days of the week will vary substantially, the quantity of producer milk associated with the market must necessarily include a reasonable reserve above the market's actual Class I sales. That reserve must be disposed of by producers through their cooperatives or by handlers as Class II milk.

The Class II price should be at a level at which producer milk that is not needed for Class I purposes may be marketed. It should not, however, be at a price so low that it would encourage a handler to associate milk with the pool solely for manufacturing purposes. Neither should it be at a price that would return to producers less than the obtainable market value for such milk.

In establishing a Class II price, consideration must be given to the outlets that are available for Class II milk and the prices at which such outlets, including both regulated and unregulated plants, may obtain supplies from other sources. Consideration likewise must be given to the Class II prices in adjacent Federal order markets. If the proposed Class II price were higher than Class II prices in the nearby order markets, local producers may encounter difficulties in marketing reserve supplies, particularly in the months of seasonally high production.

There is no indication that the Northeastern Ohio, Youngstown-Warren, and Wheeling order producers and handlers

have been unable to market reserve supplies at the proposed Class II price. Neither is there any indication that producers and handlers in the Pennsylvania portion of the proposed marketing area have been unable to market milk for Class II uses at prices comparable to that herein proposed.

The proposed Class II price, by obtaining for producers a price the same as that in the nearby order markets, will tend to insure the orderly marketing of the market's reserve supplies. A higher Class II price than what prevails generally in the area could tend to lose for producers their most accessible and desirable Class II outlets, since some such outlets may be the same as those for the reserve supplies of nearby order markets. On the other hand, there is no justification for providing a lower price than herein proposed. The record does not show that skim milk and butterfat needed by handlers for their Class II operations are available from other sources at prices lower than the proposed Class II price.

Butterfat differentials. The Class I butterfat differential should be 12 percent of the Chicago butter price for the preceding month and the Class II butterfat differential should be 11.5 percent of the Chicago butter price for the current month. For 1966, this would have resulted in Class I and Class II differentials averaging 8 cents and 7.6 cents, respectively.

The Northeastern Ohio, Youngstown-Warren, and Wheeling order Class I and Class II differentials are 13 percent and 11.5 percent, respectively, of the Chicago butter price. These resulted in average differentials in 1966 of 8.6 cents for Class I and 7.6 cents for Class II.

Under the PMCC regulations, the average Class I butterfat differential equivalent in Western Pennsylvania in 1966 was 10.4 cents, or 15.5 percent of the Chicago butter price. The PMCC Class II butterfat differential in Western Pennsylvania is 11.5 percent of the Chicago butter price, the same as provided in the Northeastern Ohio and other Federal orders and as herein proposed.

The butterfat differentials herein provided were proposed by the principal producer associations in the market. They have wide acceptance in the industry and are the Class I and Class II butterfat differentials most applicable in Federal orders.

The spokesman of one producer association proposed the same butterfat differential (12 percent of the Chicago butter price) for Class I and Class II. He stated that this has worked well in some Federal orders and would simplify the accounting procedures under the proposed order. Of the 73 Federal orders currently in effect, four have the same butterfat differential for Class I and Class II milk. The conditions in these markets that justify the same butterfat differential for Class I and Class II were not set forth in the record of this hearing. Because several orders use the same butterfat differentials for Class I and Class II is not sufficient justification per se to provide one butterfat differential for the two classes under this order.

A handler spokesman for the same Class I and Class II differential proposed a rate of 11.3 percent of the Chicago butter price. His principal argument for a lower Class I butterfat differential is that the demand in Class I products is increasingly greater for the nonfat solids and the demand for butterfat is declining. A lower Class II butterfat differential is desirable, he stated, to better enable cream to compete with cream substitutes. The handler's proposal would have the effect of increasing the cost of the skim milk portion of Class I and Class II milk and reducing substantially the cost of butterfat, especially in Class I milk.

The only testimony in support of a Class I differential higher than 12 percent of the Chicago butter price was presented by a handler who proposed retaining the Northeastern Ohio Class I differential of 13 percent of the Chicago butter price. He cited the continually increasing consumer demand for nonfat and low fat fluid milk products and the decreasing demand for butterfat. Lowering the Class I butterfat differential, and thereby increasing the cost of the skim milk portion of Class I milk, he argued, would tend to impede the increasing demand for the nonfat and low fat Class I products.

The proposed Class I butterfat differential will allocate less value to the butterfat in Class I milk and more value to the skim milk portion than is now provided in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders and by the PMCC regulations applicable in Western Pennsylvania. In 1966, when the Northeastern Ohio Class I price averaged $5.47, the value of 3.5 pounds of butterfat in a hundred pounds of milk was $3.01 (35×8.6 cents). The skim milk portion of such hundred pounds of milk was valued at $2.46.

The proposed butterfat differential of 12 percent of the Chicago butter price would have valued the butterfat in a hundred pounds of milk under the Northeastern Ohio order in 1966 at $2.80 (35×8 cents). This is 21 cents less than the value of the 3.5 pounds of butterfat in a hundred pounds of Class I milk under the Northeastern Ohio order in 1966. Had such a differential been in effect, the value of the skim milk portion of the milk would have been increased by 21 cents.

A number of fluid milk products on the market have a proportionately higher percentage of solids-not-fat (e.g., fortified or modified skim milk). With a relatively high Class I butterfat differential, producers do not receive their appropriate share of the Class I sales value represented by the solids-not-fat portion of Class I products.

Except for the handler who proposed 11.3 percent of the Chicago butter price for a Class I and Class II differential, there was no opposition at the hearing to the Class II differential of 11.5 percent of the Chicago butter price. Any reduction below 11.5 percent of the Chicago butter price as a Class II differential would tend to price butterfat below that which widely prevails in other Federal order markets and in unregulated markets. Likewise, it would be inappropriate to price the butterfat in Class I milk at this lower manufacturing value, when it is sold by handlers in higher valued Class I products.

The proposed Class I and Class II butterfat differentials, by pricing butterfat in producer milk competitively with butterfat for comparable uses from alternative sources of supply, will facilitate the orderly marketing of producer milk under the proposed order.

The butterfat differential to producers should be calculated at the average of the Class I and Class II butterfat differentials weighted by the proportion of butterfat in producer milk classified in each class during the month. This procedure for determining the producer butterfat differential is commonly provided in Federal orders, including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders. Its inclusion in the proposed order will assure returns to producers that reflect the actual value of their butterfat at the class prices provided by the order.

Location adjustments. Location adjustments should be incorporated into the order to provide an appropriate adjustment of the Class I and uniform prices. Such adjustments should be based on the location of any plant at which producer milk or other source milk is received.

For milk received at plants 85–100 miles from the nearest of the five designated cities (Canton and Cleveland, Ohio, and Erie, Pittsburgh, and Uniontown, Pa.), the Class I price should be reduced 13 cents. For plants beyond the 100-mile limit, the Class I price should be reduced 13 cents plus an additional 1.5 cents for each 10 miles or fraction thereof that such plants are more than 100 miles from the nearest of the city halls in the designated cities. The applicable mileage (from the nearest designated city to a plant) for determining the location adjustment would be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

The five measuring point cities proposed for determining the location adjustment are the same measuring points used for determining whether the Pittsburgh district or Cleveland-Erie district Class I price would be applicable at a plant located outside the marketing area. These cities are so situated geographically in relation to the supplies for the market to serve most equitably as representative measuring points from which to determine location adjustment mileages.

In addition to the five cities herein proposed as measuring points for applying location differentials, five other cities (Akron, Ashtabula, Youngstown, Warren, and Wheeling) were proposed by producers for the same purpose. Since no practical purpose would be accomplished by designating as measuring points any of the additional cities proposed (i.e., obtaining significantly different applicable location adjustments at any location from which milk may

be shipped to the marketing area), they are not so used.

The Northeastern Ohio, Youngstown-Warren, and Wheeling orders provide for location adjustments in the manner herein proposed. PMCC regulations for Western Pennsylvania do not provide for any such adjustments.

Under the Northeastern Ohio order, location differentials are applicable at plants that are 40 miles or more from the public square in Cleveland and also 27.5 miles or more from city halls in Akron, Canton, and Ashtabula. The Youngstown-Warren order location adjustments are applicable at plants 50 miles or more from the county courthouses in Youngstown and Warren, Ohio. Under the Wheeling order, location adjustments apply at plants 60 miles or more from the city halls in Wheeling, East Liverpool, and Steubenville.

The Northeastern Ohio location adjustment rate is 13 cents at plants 40–60 miles from Cleveland plus one cent for each 10 miles or fraction thereof in excess of 60 miles. The Youngstown-Warren location differential for plants 50–60 miles from the nearer of Youngstown or Warren is 10 cents plus 1.5 cents for each additional 10 miles or fraction thereof. The Wheeling location adjustment is 15 cents at plants 60–70 miles from the nearest of Wheeling, East Liverpool or Steubenville, 16.5 cents at 70–80 miles, 18 cents at 80–90 miles and plus one cent for each additional 10 miles or fraction thereof.

The minimum distances from their respective measuring points for which location adjustments apply under the Northeastern Ohio, Youngstown-Warren, and Wheeling orders have been appropriate for those respective orders since they were first established or amended 5 or more years ago. Providing location adjustment credits only at plants 85 miles or more from designated measuring points as herein proposed recognizes the rapidly changing and continuing technological improvements in moving milk greater distances from farms to milk plants. Farms within an 85-mile radius of the designated measuring points are preponderantly those delivering directly to plants in the marketing area. There would be no economic justification to provide that a handler should pay a lesser price (by receiving a location adjustment credit) for producer milk delivered to plants within such a radius. The 85-mile distance from the designated measuring point is a reasonable and appropriate standard under current conditions in the proposed enlarged marketing area as a minimum distance for establishing location adjustments.

The recommended decision provided for a location adjustment for milk received at plants 85–100 miles from the nearest of the five designated cities of 15 cents plus 1.5 cents for each additional 10 miles or fraction thereof. Proponent cooperatives excepted to the location adjustment proposed in the recommended decision because it would result in larger location adjustments at presently regulated plants than are now provided under the Northeastern Ohio order. The change in the initial location adjustment rate from 15 to 13 cents as herein provided will result in minimal changes in the location adjustments now applicable at regulated plants. This lower location adjustment rate, which is appropriate for presently regulated plants, should be equally appropriate for other plants at which a location adjustment would be applicable under the proposed order.

Class I products, because of their bulky, perishable nature, incur a relatively high transportation cost if such products or the milk used to produce them are moved considerable distances. Milk delivered directly by farmers to plants in or near the marketing area, therefore, is worth more to a handler than milk received from farmers at a plant many miles from the marketing area. This is so because in the latter instances the handler must incur the additional cost of moving that milk to the marketing area. Under these conditions, the value of producer milk delivered to plants located some distance from the marketing area is reduced in proportion to the distance (and the cost of transporting such milk) from the point of receipt to the marketing area. Providing location differentials based on the cost of moving milk to marketing area plants will insure uniform prices to all handlers regardless of the location where the milk is procured.

Location differentials applicable to the various plants should reflect the efficiency resulting from technological changes in the marketing of milk in recent years. Such technological improvements, as better roads and larger tank trucks, have tended to reduce unit hauling costs for both producers and handlers.

The location adjustment rates proposed at the hearing range from one cent to more than two cents per hundredweight for each 10 miles. The 1.5-cent rate proposed herein appropriately reflects the cost of moving milk efficiently under present economic conditions in the Eastern Ohio-Western Pennsylvania market. It is the rate most applicable in Federal orders throughout the United States and is recognized as an appropriate and representative rate for transporting milk to the market. Because of its wide applicability, it will insure a reasonable alignment of prices between this and other orders at the various locations at which handlers under the different orders compete.

It is not intended that the Class I price should be dependent on the type of plant receiving the milk. To the extent that milk is received at a plant from producers at a considerable distance from the marketing area and brought to the marketing area by the handler, he has assumed a transportation cost which might otherwise be borne by producers. Transportation costs are incurred whether milk is moved in tank trucks from distant plants to the marketing area or whether packaged fluid milk products from processing plants at the same or a similar location are distributed on routes in the marketing area.

It was suggested that a location adjustment credit or a similar allowance apply to all pool supply plants wherever located to compensate the supply plant operators for costs incurred in operating such plants and moving milk from such plants to distributing plants. It is not the purpose of the order to either promote or discourage the operation of supply plants. The operator of a pool distributing plant may elect to obtain his supply from producers delivering directly to his plant or from a supply plant. The handler operating the supply plant does so because he deems it economically advantageous to him. A location adjustment credit or similar allowance for all pool supply plants as was suggested would be tantamount to a payment from the pool to supply plant operators. Incorporating such a provision in the proposed order would be inappropriate since it would, in effect, subsidize supply plants at the expense of all producers under the order.

Because of the variations in daily demand, some milk that is moved to the market and intended for use as Class I milk cannot be so utilized and must be processed into manufactured products. Under the Northeastern Ohio order, a location adjustment is applicable, under certain conditions, to milk in the Class II classification which was moved from another pool plant.

The maximum quantity of such milk to which an adjustment may apply at a transferee plant is 8 percent of its Class I utilization. Such a margin should be sufficient for handlers under the proposed order in balancing the receipts from supply plants with day-to-day bottling requirements. The attached order gives consideration to this by providing that any remainder of Class I milk in excess of 92.5 percent of the sum of the producer milk receipts and that assigned as Class I to receipts from other order plants and unregulated supply plants may be assigned to receipts from other pool plants. However, to assure that milk will not be moved at the expense of producers, such assignment should be made first to receipts from plants at which no location adjustment is applicable and then in sequence beginning with the plant with the lowest applicable location adjustment. This sequential assignment of milk is commonly provided in Federal orders, including the Northeastern Ohio, Youngstown-Warren, and Wheeling orders, and will provide an equitable basis for facilitating the movement of milk between pool plants for Class I purposes. Likewise, it will tend to discourage the unnecessary moving of milk from pool plants at the expense of producers.

Uniform prices paid to producers supplying plants at which location differentials apply should likewise be adjusted to reflect the value of milk f.o.b. the plant to which delivered. All producers who share in the Class I proceeds in the pool should be in a position to move their milk to the market for Class I use. If a producer chooses to move his milk directly from the farm to a plant with no location differential, he pays the full transportation cost in delivering the

milk. Thus, it is appropriate that differences in prices to producers delivering their milk to other plants where location differentials apply reflect a value for the milk at these locations representative of the cost of moving milk from these points to the market for Class I use. Adjusting the uniform price for location of delivery provides an equitable means of distributing among producers the proceeds from the sale of their milk delivered to plants at various points.

One producer association spokesman proposed that milk be priced f.o.b. the farm. This would transfer the cost of moving milk from the farm to a plant from the producer to the plant operator. Under the existing Federal orders, under the PMCC regulations and otherwise in the proposed marketing area, the expense involved in moving milk from the farm to a milk plant has been the responsibility of the producers. The proponent of this provision represents relatively few producers on the market. There was no support for his proposal by the major producer associations in the market or by handlers. The testimony presented at the hearing cited the New York-New Jersey order provision which provides for such farm point pricing. It did not show, however, why such pricing would be appropriate under the proposed order, or that the present method of pricing milk f.o.b. the plant to which delivered would be inappropriate. The proposal to include such a provision in the order is denied.

(d) *Distribution of the proceeds to producers.* A marketwide equalization pool should be included in the proposed order as a means of distributing to producers the proceeds from the sale of their milk. Such a pool will assure a producer supplying the order market a return based on his pro rata share of the total Class I sales of such market. The "blend" that a producer receives for each month's deliveries will be a price based on the overall utilization of all producer milk received at the pool plants of all regulated handlers during such month.

The uniformity of payments to producers provided under a marketwide pool permits a handler either to maintain a manufacturing operation in his plant to handle the seasonal and daily reserve supplies of milk or to limit the operation at his plant to the handling of milk for Class I purposes only, without affecting the blended prices payable to his producers as against other producers in the market.

The facilities in the various plants in the area for handling producer milk in excess of that needed for Class I purposes vary considerably. While a number of plants in the market are exclusively Class I operations and handle little or no surplus milk, others utilize varying proportions of their supplies for manufacturing purposes. Under these conditions, a marketwide pool in the Eastern Ohio-Western Pennsylvania marketing area will facilitate the marketing of producer milk. A marketwide pool will make it possible for producer associations to assist in diverting seasonal reserve milk and thus keep producers on the market who are needed to fulfill the year-round requirements of the market. It will assist also in apportioning among all producers the lower returns from reserve milk where otherwise this burden would be placed on individual groups of producers. A marketwide pool will thereby contribute to market stability and the attainment of an adequate and dependable supply of producer milk.

Two Pennsylvania handlers and a spokesman for some Pennsylvania producers urged that a separate order be provided for Western Pennsylvania (instead of one order as provided by this decision) and that it provide for a handler pool. The facilities in the Pennsylvania plants in the proposed marketing area for handling producer milk in excess of that needed for Class I purposes vary considerably, as they do in the other portions of the proposed marketing area. The uneven distribution of the handling of the reserve supplies in the market that has in the past justified, and now justifies, marketwide pooling in the Northeastern Ohio, Youngstown-Warren, and Wheeling orders is no less prevalent in Western Pennsylvania than in other portions of the proposed marketing area. In view of these considerations, the proposal for a handler pool for distributing returns to producers under the proposed order is denied.

One handler proposed that a "Louisville plan" of fall production incentive payments be utilized in distributing returns to producers. Such a plan provides for setting aside a portion of the payments made by handlers for producer milk in the spring months of flush production for distribution to producers on the basis of their deliveries during the fall months of low production.

Louisville plans, also referred to as take-out and pay-back plans, are provided for in a number of Federal order markets, including the nearby markets of Columbus, Cincinnati, and Miami Valley. Louisville plans are not used in either the Northeastern Ohio, Youngstown-Warren, or Wheeling orders or elsewhere in the proposed marketing area.

Louisville plans are concerned only with distributing to producers the payments made by handlers for milk. Such plans do not affect the prices paid by a handler for producer deliveries. The principal producer associations in the market neither proposed nor supported the inclusion of a Louisville plan in the proposed order. It would be inappropriate to include in the order such a provision for distributing returns to producers that did not have their support. The proposal, therefore, is denied.

A proposal listed in the hearing notice would provide for payment from the pool to qualified cooperative associations for marketwide services rendered by such cooperatives. No testimony was presented at the hearing on this proposal, which was abandoned by its proponent. Accordingly, no action is taken on it in this decision.

Payments for producer milk. The Northeastern Ohio order provisions for paying producers are equally appropriate for the proposed marketing area and should be incorporated in the proposed order.

The Northeastern Ohio order provides that handlers must pay for producer milk at not less than the monthly uniform price by the 18th of the following month if paid directly to the producer and by the 16th if paid to a cooperative. It was proposed by one cooperative that these dates be advanced to the 15th and 13th. To attain this, the cooperative further proposed that the market administrator be required to complete the pool and announce the uniform price not later than the 12th of the month (instead of the 14th as now provided in the Northeastern Ohio order) and change the dates for payments to and from the producer-settlement fund from the 16th and 17th, respectively, to the 14th and 15th of the month.

As now provided in the Northeastern Ohio order, proposed at the hearing, and specified in the attached order, handlers must submit reports to the market administrator not later than the eighth day of the following month. There was no support at the hearing either by the proponent of advancing the dates for computing the pool and paying producers or by any other party for requiring handlers to submit their reports by an earlier date. To the contrary, it was testified that it would be impractical under the proposed order to provide an earlier date than the eighth day of the month by which handlers must file their reports.

The number of handler reports that would be included in the pool computation under the proposed order is vastly greater than the number now included in the Northeastern Ohio order. Moreover, such reports would be obtained from handlers over a much wider geographical area. These factors argue for more rather than less time to be allowed the market administrator to process handlers' reports and compute the pool.

On the basis of testimony presented at the hearing, it would be impractical to advance the dates by which the pool must be completed and producers paid without allowing a correspondingly greater time between the filing of reports and the pool computation. The cooperative proposal for advancing these dates is therefore denied.

Another cooperative proposed that handlers be required to pay the market administrator at the applicable class prices for all producer milk delivered to their plants. The market administrator in turn would distribute such monies to producers through payments at the uniform price. The payments could be made either directly to producers or to cooperatives authorized to collect for their members.

Under the provisions commonly provided in Federal orders, a handler is required to pay at least the uniform price to all producers (or their cooperatives) from whom he purchases milk. The difference between what the handler pays producers and the utilization value of his milk at the class prices is paid to or received from an "equalization fund". Handlers with higher-than-average utilization pay the difference into this fund.

The money is then paid out to the handlers with a lower-than-average utilization.

The proponent cooperative stated that under its proposal, the market administrator would know more promptly than "under an equalization pool" when a handler is delinquent in his payments for producer milk. This, the cooperative claimed, would permit the market administrator to institute action more promptly in the collection of delinquent payments.

Other supporting reasons cited by the cooperative were that (1) handlers would be relieved of the work and expense in preparing producer payrolls and writing checks to producers, (2) handlers' accounting to the pool would be simplified, and (3) any misunderstanding or confusion which may attend payments by handlers into, and their withdrawal of monies from the equalization fund would tend to be dispelled.

Except for the cooperative making the proposal, there was no support at the hearing for it by producers or handlers. The reasons cited by the cooperative as to why its proposal should be adopted in this market are those which might well be presented by handlers. However, handlers opposed this system of payment despite the advantages the cooperative alleges it would have for them. In fact, handlers countered that the advantages indicated by producers were illusory in that no real functions would be eliminated and no actual efficiencies realized.

There is no indication that the method of paying producers now used in the Northeastern Ohio, Youngstown-Warren, Wheeling, and other orders is not working satisfactorily and would not work satisfactorily under the proposed order. Moreover, it was not shown what marketing conditions under the proposed order the proposal was intended to correct or that it would provide any advantages for producers and handlers in the market. Accordingly, the proposal that the handlers pay the market administrator directly for producer milk and the market administrator in turn pay producers is denied.

(e) *Administrative provisions.* Producer-settlement, administrative expense and marketing service funds should be provided under the proposed Eastern Ohio-Western Pennsylvania order in the same manner as under the present Northeastern Ohio, Youngstown-Warren, and Wheeling orders. Such funds of the present orders are equally necessary and appropriate for the proposed order.

The maximum rate of deduction for administration expense should be 3 cents per hundredweight and for marketing services, 5 cents. These are the maximum rates provided by the present Northeastern Ohio order. The same maximum rates for marketing services are provided also by the other two orders. However, these orders set maximum rates of 4 cents per hundredweight for administration expenses. No need was shown for maximum rates different from those in the Northeastern Ohio order. If experience indicates that administration of the order and marketing services can be performed at lesser rates, provision is made in the proposed order whereby the Secretary may adjust the rates downward without the necessity of a hearing.

To accomplish the merger of the Northeastern Ohio, Youngstown-Warren, and Wheeling orders effectively and equitably, the assets in the administrative and marketing service funds which have accrued under the separate orders should be combined. Similar procedure should be carried out with respect to the producer-settlement fund reserves. Any liabilities of such funds under the individual orders should be paid from the new funds so created. Similarly, obligations which are due and owing to the funds under the separate orders should remain and be paid to the combined funds under the merged order. This procedure would assure and maintain the continuity of the regulatory program in these areas. No opposition was voiced at the hearing to the proposed merger of the funds.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. All currently regulated handlers who have contributed to the administrative funds of the separate orders will continue to be regulated under the merged order. Because the liabilities of each of the present funds would be paid from the consolidated fund, it is equitable to use accumulated monies to pay such liabilities and to carry over any minor balances for use in administering the merged order.

The money accumulated in the marketing service funds of the separate orders is that paid by producers for whom the market administrator has performed such services as verifying the tests and weights of producer milk and furnishing market information. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the expanded market. The consolidation of the assets in the three separate marketing service funds will allow the continuation of the marketing service program under the merged order.

The producer-settlement funds under the three present orders facilitate the payment by handlers for milk received from producers. A handler whose obligation for producer milk received during the month is greater than the amount he is required to pay producers at the applicable uniform price pays the difference into the producer-settlement fund. Each handler whose obligation for producer milk is less than the applicable uniform price receives payment of the difference from the fund. For the efficient functioning of the fund, a reasonable reserve is set aside at the end of each month.

Most of the producers for the Eastern Ohio-Western Pennsylvania market currently supply milk to one or the other of the present Federal order markets. The major part of the monies in the separate funds will be reflected in the uniform prices of the producers whose money will be in the merged fund reserves. These combined funds would also serve the function of contingency reserve funds from which money would be available for obligations (resulting from audit adjustments and otherwise) for which the funds of one or more of the present orders were responsible. It would be impractical to distribute the existing producer-settlement fund reserves to producers and to accumulate anew the required reserve for the consolidated order. To do so would increase administrative expenses without realizing any significant additional returns to producers under the presently existing orders.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

The presiding officer's rulings have been reviewed in the light of the briefs filed by interested parties. These rulings, for the reasons stated by the presiding officer on the record, are hereby affirmed.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling

of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held.

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Eastern Ohio-Western Pennsylvania Marketing Area", and "Order Amending and Merging the Orders Regulating the Handling of Milk in the Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling Marketing Areas", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be pubished in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

REFERENDUM ORDER; DETERMINATION OF REPRESENTATIVE PERIOD; AND DESIGNATION OF REFERENDUM AGENT

It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order amending and merging the orders regulating the handling of milk in the Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling marketing areas, is approved or favored by the producers, as defined under the terms of such attached order, and who, during the representative period, were engaged in the production of milk for sale within the marketing area defined in such attached order.

The month of December 1967 is hereby determined to be the representative period for the conduct of such referendum. A. T. Radigan is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (30 F.R. 15412), such referendum to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on February 21, 1968.

GEORGE L. MEHREN,
Assistant Secretary.

Order[1] *Amending and Merging the Orders Regulating the Handling of Milk in the Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling Marketing Areas*

PART 1036—MILK IN EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1036 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1036.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling marketing areas. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Eastern Ohio-Western Pennsylvania order, which amends and merges the Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling orders and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Eastern Ohio-Western Pennsylvania marketing area, and the minimum prices specified in the Eastern Ohio-Western Pennsylvania order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The Eastern Ohio-Western Pennsylvania order regulates the handling of

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreements upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the Eastern Ohio-Western Pennsylvania order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundredweight or such amount not to exceed 3 cents per hundredweight as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1036.45(a) (3) and (7) and the corresponding steps of § 1036.45(b); and

(c) Route disposition in the marketing area from a paritally regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the orders regulating the handling of milk in the Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling marketing areas (Parts 1036, 1048 and 1008, respectively) shall be amended and merged into one order and the handling of milk in the merged marketing area, to be designated as the "Eastern Ohio-Western Pennsylvania marketing area", shall be in conformity to and in compliance with the terms and conditions of Part 1036 as hereby amended. Part Nos. 1048 and 1008 are superseded by the revision of Part 1036 and Part 1036 is hereby amended as follows:

The provisions of the proposed marketing agreement and order amending and merging the Northeastern Ohio, Greater Youngstown-Warren, and Greater Wheeling orders contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on November 16, 1967, and published in the FEDERAL REGISTER on November 21, 1967 (32 F.R. 15952; F.R. Doc. 67-13667), shall be and are the terms and provisions of this order and are set forth in full herein subject to the following modifications:

Changes are made in §§ 1036.7, 1036.10, 1036.11, 1036.16(d), 1036.41 (a)(1) and (b)(1), 1036.53(a), and 1036.72(a)(1).

DEFINITIONS

§ 1036.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1036.2 Secretary.

"Secretary" means the Secretary of Agriculture or such other officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 1036.3 Department.

"Department" means the U.S. Department of Agriculture.

§ 1036.4 Person.

"Person" means any individual, partnership, corporation, association, or other business unit.

§ 1036.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sale or marketing milk or its products for its members; and

(c) To have all of its activities under the control of its members.

§ 1036.6 Eastern Ohio-Western Pennsylvania marketing area.

The "Eastern Ohio-Western Pennsylvania marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the following geographical units, including all waterfront facilities connected therewith and all territory wholly or partly therein occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) In Ohio:

(1) The following counties in their entirety:

Ashtabula.	Jefferson.
Belmont.	Mahoning.
Carroll.	Monroe.
Columbiana.	Portage.
Cuyahoga.	Summit.
Geauga	Trumbull.
Harrison.	Tuscarawas.

(2) All of Stark County except Paris and Sugar Creek Townships;

(3) Willoughby, Mentor, and Kirtland Townships and the city of Painesville in Lake County;

(4) Black River, Sheffield, Avon Lake, Avon, Amherst, Elyria, Ridgeville, Carlisle, Eaton, Columbia, and Grafton Townships in Lorain County;

(5) Liverpool, Brunswick, Hinckley, York, Granger, Medina, Lafayette, Montville, Sharon, and Wadsworth Townships in Medina County;

(6) Sections 1, 2, 3, 10, 11, and 12 of Sugar Creek Township in Wayne County; and

(7) Londonderry, Oxford, and Millwood Townships in Guernsey County.

(b) In Pennsylvania:

(1) The following counties in their entirety:

Allegheny.	Fayette.
Armstrong.	Greene.
Beaver.	Lawrence.
Butler.	Mercer.
Crawford.	Venango.
Erie.	Washington.

(2) In Clarion County, the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby; and

(3) All of Westmoreland County except (i) the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward and (ii) the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair.

(c) In West Virginia, the following counties in their entirety:

Brooke.	Marshall.
Hancock.	Ohio.

§ 1036.7 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk, cream, and mixtures of such cream or milk and skim milk.

§ 1036.8 Route disposition.

"Route disposition" means a delivery (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I pursuant to § 1036.41(a)(1).

§ 1036.9 Distributing plant.

"Distributing plant" means a plant in which milk approved by a duly constituted health authority for fluid consumption is processed or packaged and which has route disposition in the marketing area during the month.

§ 1036.10 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority is transferred or diverted during the month to a pool plant.

§ 1036.11 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section that is not an other order plant or a producer-handler plant: *Provided*, That any plant that was a pool plant pursuant to Part 1008 (Greater Wheeling), 1036 (Northeastern Ohio), or 1048 (Greater Youngstown-Warren) of this chapter in any month after August 1967 until the effective date of this order or any plant that would have been a pool plant pursuant to this order had it been in effect in any month subsequent to August 1967 shall be considered to have been a pool plant for such month for the purpose of this section.

(a) A distributing plant that has route disposition during the month of not less than 50 percent (40 percent for each month of April through August) of the total receipts of fluid milk products that are approved by a duly constituted health authority for fluid consumption and that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1036.16 and that has route disposition in the marketing area during the month of not less than 15 percent of such receipts.

(b) A supply plant from which during the months of September, October, and November not less than 50 percent, and in all other months not less than 40

percent, of the total quantity of milk approved by a duly constituted health authority for fluid consumption physically received (including that diverted from other plants) at such plant from dairy farmers and handlers pursuant to § 1036.13(d) or diverted as producer milk pursuant to § 1036.16 to pool plants and nonpool plants is transferred or diverted to and physically received in the form of fluid milk products at pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of September through February shall be a pool plant for the months of March through August unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant.

§ 1036.12 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) Except as provided in paragraphs (c)(2) and (d)(2) of this section, "other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1036.11 and a greater volume of fluid milk products is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of from such plant in the marketing area regulated pursuant to such other order.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means:

(1) A nonpool plant that is a distributing plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to its route disposition in the marketing area that is not priced and pooled pursuant to any order issued pursuant to the Act.

(d) "Unregulated supply plant" means:

(1) A nonpool plant that is a supply plant and is not an other order plant or a producer-handler plant; and

(2) An other order plant with respect to fluid milk products which were received at a pool plant from such a plant and which are not priced and pooled pursuant to any order issued pursuant to the Act.

§ 1036.13 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(d) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(e) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; and

(f) A producer-handler.

§ 1036.14 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and who received no fluid milk products from other dairy farmers or from sources other than pool plants: *Provided,* That such person provides proof satisfactory to the market administrator that the care and management of all the dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1036.15 Producer.

"Producer" means any person except a producer-handler as defined in any order (including this part) issued pursuant to the Act who produces milk for fluid consumption in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1036.16 from a pool plant to a nonpool plant or another pool plant. "Producer" shall not include a person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

§ 1036.16 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1036.13(d): *Provided,* That:

(1) If the milk received at a pool plant from a handler pursuant to § 1036.13(d) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1036.13(d) at the location of the pool plant; and

(2) "Producer milk" shall not include milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II designation under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(b) Diverted from a pool plant to a nonpool plant other than an other order plant or a producer-handler plant: *Provided,* That:

(1) Except as provided in subparagraph (4) of this paragraph, such milk shall be deemed to have been received by the diverting handler at the location of the plant from which diverted;

(2) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(3) In any month of August through March, the quantity of milk of any producer diverted to nonpool plants that exceeds that delivered to pool plants shall not be deemed to have been received by the diverting handler and shall not be producer milk;

(4) In any month of April through July, the quantity of milk of any producer diverted to nonpool plants that exceeds that physically received at pool plants shall be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted; and

(5) The diverting handler shall designate the dairy farmers' deliveries that are not producer milk pursuant to this paragraph. If the handler fails to make such designation, no milk diverted by him to a nonpool plant shall be producer milk;

(c) Diverted from a pool plant to an other order plant if a Class II classification (or its equivalent) is designated for such milk pursuant to the provisions of another order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order. The provisos in paragraph (b) of this section shall apply to this paragraph as if set forth fully herein; or

(d) Diverted from a pool plant to another pool plant for the account of a handler operating the pool plant from which diverted. For the purposes of §§ 1036.51, 1036.53 and 1036.72, milk so diverted shall be deemed to have been received by the diverting handler at the location of the pool plant to which diverted: *Provided,* That if at least half of a producer's milk pooled under this order during the month is physically received at the pool plant from which diverted, milk so diverted shall (for the purposes of §§ 1036.51, 1036.53, and 1036.72) be deemed to have been received

by the diverting handler at the location of the pool plant from which diverted.

§ 1036.17 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products from any source except (1) producer milk, (2) fluid milk products from pool plants, and (3) fluid milk products in inventory at the beginning of the month;

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed, converted into or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for pursuant to § 1036.33.

§ 1036.18 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload operation on the premises of a plant shall be considered a part of the plant operation.

§ 1036.19 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported for the month by the Department.

§ 1036.20 Pittsburgh district.

"Pittsburgh district" means all the territory in the marketing area within 80 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) of the Pittsburgh, Pa., city hall.

§ 1036.21 Cleveland-Erie district.

"Cleveland-Erie district" means all the territory in the marketing area that is not within the Pittsburgh district.

MARKET ADMINISTRATOR

§ 1036.25 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by and shall be subject to removal at the discretion of, the Secretary.

§ 1036.26 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

§ 1036.27 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Within 30 days following the date on which he enters upon his duties or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of funds provided by § 1036.77:

(1) The cost of his bond and of the bonds of his employees;

(2) His own compensation; and

(3) All other expenses, except those incurred under § 1036.76, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his discretion unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1036.30 through 1036.32, or payments pursuant to §§ 1036.70, 1036.74, 1036.76, 1036.77, and 1036.78;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) On or before the 20th day of each month, report to each cooperative association that so requests the class utilization of milk received during the preceding month by each handler from producers who are members of such association, prorating to such receipts the class utilization of all producer receipts of such handler;

(i) Audit all reports and payments by each handler by inspection of such handler's records and of the records of any other handler or nonhandler upon whose utilization the classification of skim milk and butterfat for such handler depends;

(j) On or before the dates specified herein, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following:

(1) The sixth day of each month, the Class I price and the Class I butterfat differential, both for the current month; and the Class II price and the Class II butterfat differential, both for the preceding month; and

(2) The 14th day of each month the uniform price computed pursuant to § 1036.61 and the butterfat differential computed pursuant to § 1036.71;

(k) Prepare and disseminate to the public such statistics and information as he deems advisable and as do not reveal confidential information;

(l) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1036.45(a)(8) and the corresponding step of § 1036.45(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1036.45 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in the verification of such report; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

REPORTS, RECORDS, AND FACILITIES

§ 1036.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler (except a handler pursuant to § 1036.13 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received, reporting in detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk (or, in the case of handlers pursuant to § 1036.13(b), milk received from qualified dairy farmers);

(2) Fluid milk products received from other pool plants;

(3) Other source milk;

(4) Milk diverted pursuant to § 1036.16; and

(5) Inventories of fluid milk products and Class II products at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing the respective amounts of skim milk and butterfat

in route disposition in the marketing area; and

(c) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

§ 1036.31 Producer payroll reports.

(a) Each handler pursuant to § 1036.13 (a), (c), and (d) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 25th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1036.62(b) shall report to the market administrator on or before the 25th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering milk that is approved by a duly constituted health authority for fluid consumption shall be reported in lieu of payments to producers.

§ 1036.32 Other reports.

(a) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler pursuant to § 1036.13 (d) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the eighth day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

§ 1036.33 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products in inventory at the beginning and end of each month; and

(d) Payments to dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

§ 1036.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the calendar month to which such books and records pertain: *Provided,* That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1036.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported pursuant to § 1036.30 shall be classified each month pursuant to the provisions of §§ 1036.41 through 1036.45: *Provided,* That such skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1036.41 Classes of utilization.

Subject to the conditions set forth in § 1036.43, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as provided in paragraph (b) of this section; and

(2) Not accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), sour cream, sour cream products (e.g., dips), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, milk shake mix containing not less than 12 percent total milk solids, and sterilized products in hermetically sealed glass or metal containers;

(2) Skim milk and butterfat in fluid milk products delivered in bulk form to and used at a commercial food processing establishment (other than a milk plant) in the manufacture of packaged food products (other than milk products) for consumption off the premises;

(3) Skim milk and butterfat in fluid milk products disposed of by a handler for livestock feed;

(4) Skim milk and butterfat in fluid milk products dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(5) Skim milk and butterfat in inventory of fluid milk products at the end of the month;

(6) Skim milk represented by the nonfat solids added to a fluid milk product which is in excess of an equivalent volume of such product prior to the addition;

(7) Skim milk and butterfat, respectively, in shrinkage at each pool plant but not in excess of:

(i) Two percent of producer milk (except that received from a handler pursuant to § 1036.13(d);

(ii) Plus 1.5 percent of producer milk received from a handler pursuant to § 1036.13(d): *Provided,* That if the handler receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage pursuant to this subdivision shall be 2 percent;

(iii) Plus 1.5 percent of bulk fluid milk products received from other pool plants;

(iv) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II utilization was requested by the operators of both plants;

(v) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II utilization is requested by the handler; and

(vi) Less 1.5 percent of bulk fluid milk products transferred or diverted to other plants; and

(8) Skim milk and butterfat in shrinkage of other source milk assigned pursuant to § 1036.42(b)(2).

§ 1036.42 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each pool plant; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in:

(1) The net quantity of producer milk and other fluid milk products specified in § 1036.41(b)(7); and

(2) Other source milk exclusive of that specified in § 1036.41(b)(7).

§ 1036.43 Transfers.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to either class shall be limited to

the amount thereof remaining in such class in the transferee plant after the computations pursuant to § 1036.45(a) (8) and the corresponding step of § 1036.45(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1036.45(a) (3) and the corresponding step of § 1036.45(b), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1036.45(a) (7) or (8) and the corresponding steps of § 1036.45(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification in Class II in his report submitted pursuant to § 1036.30;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any route disposition in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(ii) Any route disposition in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk; and

(d) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in subparagraphs (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, movements in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1036.41.

§ 1036.44 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1036.30 and compute for each handler the total pounds of skim milk and butterfat in each class: *Provided,* That the skim milk contained in any product utilized, produced or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1036.45 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1036.44, the market administrator shall determine the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1036.41(b) (7);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class II pursuant to § 1036.41(b) (6) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which appropriate health approval is not established, or which are from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant:

(*a*) For which the handler requests Class II utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I milk by 1.25 and subtracting the sum of the pounds of skim milk in producer milk, receipts from other pool handlers, and receipts in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from an other order plant, in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in inventory of fluid milk products at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (4) (i) of this paragraph;

(8) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant that are in excess of similar transfers to the same plant and that were not subtracted pursuant to subparagraph (4)(ii) of this paragraph:

(i) In series beginning with Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II utilization of skim milk announced for the month by the market administrator pursuant to § 1036.27(l) or the percentage that Class II utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received from pool plants of other handlers according to the classification of such products pursuant to § 1036.43(a); and

(10) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

MINIMUM PRICES

§ 1036.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk f.o.b. plants in Wisconsin and Minnesota, as reported by the Department for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential (rounded to the nearest one-tenth cent) at the rate of the Chicago butter price times 0.12 and rounded to the nearest cent. For the purpose of computing Class I prices from the effective date hereof through April 1968, the basic formula price shall not be less than $4.05.

§ 1036.51 Class prices.

Subject to the provisions of §§ 1036.52 and 1036.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* For the first 18 months from the effective date of this order, the Class I price shall be the basic formula price for the preceding month adjusted as follows:

(1) Add $1.67 for plants in the Cleveland-Erie district and $1.77 for plants in the Pittsburgh district, plus 20 cents for each district through April 1968. At a plant outside the marketing area, add the amount applicable pursuant to this paragraph at the location of the city hall of the following cities that is nearest (by the shortest hard-surfaced highway distance as determined by the market administrator) such plant: Canton and Cleveland, Ohio; and Erie, Pittsburgh, and Uniontown, Pa.

(2) Add or subtract a supply-demand adjustment computed as follows:

(i) Determine the total hundredweight of producer milk classified in the second and third preceding months;

(ii) Determine the total hundredweight of milk classified in Class I by all handlers pursuant to § 1036.13 (a), (c), and (d) (adjusted to eliminate duplications due to Class I transfers between such handlers) in the second and third preceding months;

(iii) Determine the "current utilization percentage" by calculating the percentage, rounded to the nearest full percentage, that the amount obtained in subdivision (i) of this subparagraph is of the amount obtained in subdivision (ii) of this subparagraph;

(iv) Compute a "deviation percentage" by subtracting from the current utilization percentage, the designated "standard utilization percentage" for the month, as follows:

Month	*Standard utilization percentage*
January	130
February	129
March	129
April	130
May	131
June	132
July	141
August	149
September	142
October	128
November	126
December	128

(v) Determine the amount of the supply-demand adjustment from the following table: *Provided,* That if the deviation percentage does not fall within a listed bracket, the amount of the adjustment shall be determined by the adjacent bracket that is the same as or nearest to the bracket used in the preceding month:

Deviation percentage:	*Amount of supply-demand adjustment (cents)*
+13 or over	−25
+10 or +11	−19
+7 or +8	−13
+4 or +5	−7
+2 or −2	0
−4 or −5	+7
−7 or −8	+13
−10 or −11	+19
−13 or below	+25

(b) *Class II price.* The Class II price shall be the basic formula price for the month: *Provided,* That such Class II price shall not be more than the sum of subparagraphs (1) and (2) of this paragraph plus 10 cents, rounded to the nearest cent:

(1) From the Chicago butter price for the month, subtract 3 cents, add 20 percent of the resulting amount and multiply by 3.5; and

(2) From the weighted average of the carlot prices per pound of spray process nonfat dry milk solids for human consumption, f.o.b. manufacturing plants the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, multiply by 8.5 and then multiply by 0.965.

§ 1036.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices calculated pursuant to § 1036.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.12; and

(b) *Class II price.* Multiply the Chicago butter price for the month by 0.115.

§ 1036.53 Location adjustments to handlers.

(a) The Class I price for producer milk and other source milk (for which a location adjustment is applicable) at a plant more than 85 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from all the cities listed in § 1036.51(a)(1) shall be reduced 13 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the city hall of the nearest of the cities listed in § 1036.51 (a)(1).

(b) For the purpose of computing location adjustments, receipts of fluid milk products from pool plants at a pool plant shall be assigned any remainder of Class I milk at such plant that is in excess of 92.5 percent of the sum of producer milk receipts at the plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

§ 1036.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.

APPLICATION OF PRICES

§ 1036.60 Computation of the net pool obligation of each handler.

The net pool obligation of each handler pursuant to § 1036.13 (a), (c), and (d) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant

to § 1036.45(c) by the applicable class price;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1036.45(a)(10) and the corresponding step of § 1036.45(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(5) and the corresponding step of § 1036.45(b);

(d) Add an amount equal to the difference between the Class I and Class II price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(3) and the corresponding step of § 1036.45(b);

(e) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, of the skim milk and butterfat subtracted from Class I pursuant to § 1036.45(a)(7) and the corresponding step of § 1036.45(b).

§ 1036.61 Computation of uniform price.

For each month, the market administrator shall compute a uniform price as follows:

(a) Combine into one total the values computed pursuant to § 1036.60 for all handlers who filed the reports pursuant to § 1036.30 for the month, except those in default of payments required pursuant to § 1036.74 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of milk represented by the values specified in paragraph (a) of this section is less or more, respectively, than 3.5 percent, the amount obtained by multiplying such difference by the butterfat differential pursuant to § 1036.71 and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the minus location differentials computed pursuant to § 1036.72(a);

(d) Subtract an amount equal to the total value of the plus location differential computed pursuant to § 1036.72(a);

(e) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(e); and

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

§ 1036.62 Obligations of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1036.30 and 1036.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1036.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1036.60(e) and a credit in the amount specified in § 1036.74(b)(2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1036.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1036.11(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler for milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat in the plant's route disposition in the marketing area;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location or at the Class II price, whichever is higher.

§ 1036.63 Notification.

On or before the 14th day of each month the market administrator shall notify each handler who submitted a report for the preceding month pursuant to § 1036.30 of:

(a) The classification pursuant to § 1036.45 of skim milk and butterfat in producer milk received by such handler during the month and the value of such milk pursuant to § 1036.60;

(b) The uniform price for the month pursuant to § 1036.61; and

(c) The amount due such handler pursuant to § 1036.75 and the amount to be paid by such handler pursuant to §§ 1036.74, 1036.76, and 1036.77.

PAYMENTS

§ 1036.70 Time and method of payment.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) To each producer, on or before the 18th day of the following month, the uniform price per hundredweight for his deliveries of producer milk during the month adjusted pursuant to §§ 1036.71, 1036.72, and 1036.76, subject to the following:

(i) Minus payments made pursuant to paragraph (c) of this section;

(ii) Less proper deductions authorized in writing by the producer; and

(iii) If by such date the handler has not received full payment from the market administrator pursuant to § 1036.75 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b)(1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association for producer milk on or before the 16th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer, and submit to the cooperative association written information which shows for each such member-producer (i) the total

pounds of milk received from him during the preceding month, (ii) the total pounds of butterfat contained in such milk, (iii) the number of days on which milk was received, and (iv) the amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association;

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler shall be made by written notice to the market administrator, and shall be subject to his determination;

(c) Upon written request filed with him on or before the 15th day of the month by a producer, or by a cooperative association which collects payments pursuant to paragraph (b) of this section, each handler shall make payment as follows:

(1) On or before the last day of the month, to each such producer who has not discontinued delivery of milk to such handler, an amount not less than the value of milk received from such producer during the first 15 days of such month computed at the Class II price for the preceding month for milk of 3.5 percent butterfat content, without deduction for hauling; and

(2) On or before the 27th day of the month, to the cooperative association, for milk received during the first 15 days of the month from certified members specified in the request for payment, an amount not less than the aggregate value of such milk at the Class II price for the preceding month for milk of 3.5 percent butterfat content, without deduction for hauling; and

(d) On or before the 15th day after the end of each month, each handler shall pay a cooperative association which is a handler, for milk received by him from a pool plant operated by such cooperative association, at not less than the prices applicable pursuant to § 1036.51.

§ 1036.71 Butterfat differential to producers.

The uniform price shall be increased or decreased for each one-tenth percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the rate (rounded to the nearest one-tenth cent) determined by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1036.45 by the respective butterfat differential for each class and dividing the sum of the resulting amounts by the total pounds of butterfat in producer milk.

§ 1036.72 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk shall be adjusted as follows:

(1) At all plants, reduced according to the location of the plant at the rates set forth in § 1036.53; and

(2) Additionally, at plants at which the Pittsburgh district Class I price is applicable, increased 10 cents.

(b) For the purpose of computations pursuant to § 1036.74(b), adjustments pursuant to this section shall be computed according to the location of the nonpool plant from which other source milk was received.

§ 1036.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments pursuant to §§ 1036.62 and 1036.74 and out of which he shall make all payments pursuant to § 1036.75: *Provided,* That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1036.74 Payments to the producer-settlement fund.

On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The net pool obligation pursuant to § 1036.60 for such handler; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform price; and

(2) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) of other source milk for which a value is computed pursuant to § 1036.60(e).

§ 1036.75 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1036.74(b) exceeds the amount computed pursuant to § 1036.74(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1036.76 Marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 16th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 16th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1036.77 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1036.45(a) (3) and (7) and the corresponding steps of § 1036.45(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1036.78 Adjustment of accounts.

(a) *Payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due (1) the market administrator from such handler, (2) such handler from the market administrator, or (3) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the fifth day after such notice.

(b) *Overdue accounts.* Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1036.74, 1036.75, 1036.76, 1036.77, or paragraph (a) of this section shall be increased one-half of 1 percent on the first day of the calendar month next following the due date of such obligation and, on the first day of each calendar month thereafter until such obligation is paid.

§ 1036.79 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as pro-

vided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the calendar month during which the market administrator receives the handlers' utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers; the name of such producers(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the months during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or 2 years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

Effective Time, Suspension, or Termination

§ 1036.90 Effective time.

The provisions of this part or any amendment thereto shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1036.91 Suspension or termination.

The Secretary shall suspend or terminate any or all provisions of this part whenever he finds that they obstruct or do not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 1036.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such other person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary, execute such assignment or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the market administrator or such other person pursuant thereto.

§ 1036.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such person as the Secretary may designate shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet the outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

Miscellaneous Provisions

§ 1036.100 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 1036.101 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

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